

HOUSE JOURNAL

SEVENTY-SEVENTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

FIFTY-FIFTH DAY — THURSDAY, APRIL 19, 2001

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 147).

Present — Mr. Speaker; Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Absent, Excused — Wolens.

The invocation was offered by Reverend David Reed, rector, St. Alban's Episcopal Church, Harlingen, as follows:

Almighty God, Creator and Lord of all life, you have given us this good and varied land for our heritage and entrusted it to our care. We pray that you will give us thankful hearts and fashion us into a people mindful of your grace and favor, glad to seek and to do your will. Bless our state with seasonable weather, honorable industry, good crops, sound learning, inspired leadership, and a lively sense of community. Give peace in our cities and towns, peace in our homes and families, peace in our hearts. Save us from violence, discord, the arrogance of false pride, and the love of power. From the Big Bend to Boca Chica, from the Panhandle to the Piney Woods make of us one people united by our common citizenship and our common calling to live as your children.

Give wisdom and courage, O Lord, to those with whom we entrust the authority of government, especially this legislature. Guide and govern these representatives here gathered that they may enact laws that are pleasing to you and increase true freedom for your people. In the midst of so many clamoring

voices, may they listen patiently and humbly for your voice. In the midst of so many competing needs, grant to them a vision of the greatest common good, boldness to speak it, and courage to pursue it. And may they be ever mindful that true power shows itself in loving service of others.

We thank you, Lord of heaven and earth, for these your servants gathered for the sake of our beloved state and her people. Bless each of them and all of them, and their families, all the day long, that when evening falls and the busy-ness and rush of this day is past, they may find rest in you, content to have served honorably and to have done their best. In Jesus' name we pray. Amen.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for today because of important business:

Wolens on motion of Oliveira.

CAPITOL PHYSICIAN

The speaker recognized Representative Naishtat who presented Dr. David Carter of Austin as the "Doctor for the Day."

The house welcomed Dr. Carter and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 32 and Senate List No. 12).

HR 720 - ADOPTED (by Christian)

Representative Christian moved to suspend all necessary rules to take up and consider at this time **HR 720**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 720, Honoring head coach Dayna Westbrook for guiding the Nacogdoches Central Heights girls basketball team to the UIL 2001 Class 2A state title.

HR 720 was read and was adopted without objection.

HR 719 - ADOPTED (by Christian)

Representative Christian moved to suspend all necessary rules to take up and consider at this time **HR 719**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 719, Honoring the Central Heights girls basketball team for winning the Class 2A girls basketball state title.

HR 719 was read and was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Christian, who introduced the Nacogdoches Central Heights girls basketball team, winners of the 2001 Class 2A state title and their coach, Dayna Westbrook.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

HR 780 - ADOPTED

(by Hunter, Counts, B. Turner, Junell, and Goolsby)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 780**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 780, In memory of Neil Wilson Nease of Abilene.

HR 780 was read and was unanimously adopted by a rising vote.

On motion of Representative Goolsby, the names of all the members of the house were added to **HR 780** as signers thereof.

INTRODUCTION OF GUEST

The speaker recognized Representative Hunter, who introduced the mother of Neil Wilson Nease, Shirley Nease.

HR 704 - ADOPTED

(by Gallego, P. Moreno, Rangel, and Hinojosa)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 704**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 704, Recognizing the Honorable Reynaldo Garza for his 40 years' service on the federal bench.

HR 704 was adopted without objection.

On motion of Representative Edwards, the names of all the members of the house were added to **HR 704** as signers thereof.

REGULAR ORDER OF BUSINESS SUSPENDED

On motion of Representative Edwards and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

**GENERAL STATE CALENDAR
SENATE BILLS
THIRD READING**

The following bills were laid before the house and read third time:

**SB 199 ON THIRD READING
(Goodman - House Sponsor)**

SB 199, A bill to be entitled An Act relating to prohibiting the possession of firearms by certain individuals convicted of or otherwise found to have committed family violence; providing penalties.

SB 199 was passed.

**SB 1223 ON THIRD READING
(Solis - House Sponsor)**

SB 1223, A bill to be entitled An Act relating to court reporters and court reporting firms.

SB 1223 was passed.

**SB 576 ON THIRD READING
(J. Jones and Goolsby - House Sponsors)**

SB 576, A bill to be entitled An Act relating to the University of North Texas System and the component institutions of that system.

A record vote was requested.

SB 576 was passed by (Record 148): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Hardcastle; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wolens.

Absent — Elkins; Haggerty; Hamric; Kuempel; Merritt; Moreno, P.; Oliveira.

STATEMENTS OF VOTE

When Record No. 148 was taken, I was in the house but away from my desk. I would have voted yes.

Hamric

When Record No. 148 was taken, I was in the house but away from my desk. I would have voted yes.

Kuempel

**SB 858 ON THIRD READING
(Zbranek - House Sponsor)**

SB 858, A bill to be entitled An Act relating to the regulation and promotion of the oyster industry in this state.

SB 858 was passed.

**SB 813 ON THIRD READING
(Seaman, Luna, Solis, and Gallego - House Sponsors)**

SB 813, A bill to be entitled An Act relating to the creation of the spaceport trust fund.

A record vote was requested.

SB 813 was passed by (Record 149): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hardcastle; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wolens.

Absent — Berman; Craddick; Hamric; Oliveira; Ritter; Uher.

STATEMENTS OF VOTE

When Record No. 149 was taken, I was in the house but away from my desk. I would have voted yes.

Craddick

When Record No. 149 was taken, I was in the house but away from my desk. I would have voted yes.

Hamric

SB 716 ON THIRD READING
(Counts - House Sponsor)

SB 716, A bill to be entitled An Act relating to programs to promote agriculture and economic development in rural areas of this state.

A record vote was requested.

SB 716 was passed by (Record 150): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hardcastle; Hartnett; Hawley; Heflin; Hilbert; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wolens.

Absent — Craddick; Hamric; Lewis, R.; Oliveira; Reyna, E.; Thompson.

STATEMENTS OF VOTE

When Record No. 150 was taken, I was in the house but away from my desk. I would have voted yes.

Craddick

When Record No. 150 was taken, I was in the house but away from my desk. I would have voted yes.

Hamric

SB 565 ON THIRD READING
(Capelo - House Sponsor)

SB 565, A bill to be entitled An Act relating to security for public securities issued by governmental entities.

A record vote was requested.

SB 565 was passed by (Record 151): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Gutierrez; Haggerty; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C); Hilbert.

Absent, Excused — Wolens.

Absent — Craddick; Edwards; Garcia; Grusendorf; Hamric; Marchant; Oliveira.

STATEMENTS OF VOTE

When Record No. 151 was taken, I was in the house but away from my desk. I would have voted yes.

Craddick

When Record No. 151 was taken, I was in the house but away from my desk. I would have voted yes.

Hamric

SB 831 ON THIRD READING (Coleman - House Sponsor)

SB 831, A bill to be entitled An Act relating to the establishment of a medical assistance buy-in pilot program for certain persons with disabilities.

SB 831 was passed.

MAJOR STATE CALENDAR HOUSE BILLS SECOND READING

The following bills were laid before the house and read second time:

CSHB 2912 ON SECOND READING
(by Bosse, Chisum, and Counts)

CSHB 2912, A bill to be entitled An Act relating to the continuation and functions of the Texas Natural Resource Conservation Commission.

Amendment No. 1

Representative McClendon offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 2

Amend **CSHB 2912** as follows:

(1) On page 1, line 21, between "spouse" and the colon, insert ", at the time of appointment or within the two years immediately preceding the appointment".

(2) On page 2, line 6, strike "or" and substitute "[or]".

(3) On page 2, line 10, between "expenses" and the period, insert:
: or

(5) receives significant income from a business entity regulated by the commission

(McReynolds in the chair)

Representative Bosse moved to table Amendment No. 1.

The motion to table prevailed.

Amendment No. 2

Representative Maxey offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 3

Amend **CSHB 2912** as follows:

(1) On page 2, line 6, strike "or" and substitute "[or]".

(2) On page 2, line 10, between "expenses" and the period, insert the following:
": or

(5) is required to register as a lobbyist under Chapter 305, Government Code, or has been required to register as a lobbyist under that chapter at any time during the calendar year or the two calendar years preceding the appointment because of the person's activities for compensation on behalf of an entity regulated by the commission"

Representative Bosse moved to table Amendment No. 2.

The motion to table prevailed.

Amendment No. 3

Representative Burnam offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 4

Amend **CSHB 2912** as follows:

(1) On page 7, line 26, strike "make reasonable attempts to".

(2) On page 8, lines 1 through 5, strike the last two sentences of proposed Subsection (b).

Representative Bosse moved to table Amendment No. 3.

The motion to table prevailed.

Amendment No. 4

Representative Maxey offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 5

Amend **CSHB 2912** as follows:

(1) On page 7, line 26, strike "make reasonable attempts to have" and substitute "require a".

(2) On page 8, line 10, between "public" and the period, insert ", including making information on the composition, work, and conclusions of the advisory committees, work groups, and task forces available on the Internet".

Amendment No. 5

Representative Bosse offered the following amendment to Amendment No. 4:

Amend the Amendment by Maxey on **CSHB 2912** (page 5 of packet) as follows:

(1) Strike Lines 2-3.

(2) Subsection (2) is amended to read as follows:

(1) [(2)] On page 8, line 10, between "public" and the period, insert ", including making the information [on the composition, work, and conclusions of the advisory committees, work groups, and task forces] available on the Internet".

Amendment No. 5 was adopted without objection.

Amendment No. 4, as amended, was adopted without objection.

Amendment No. 6

Representative Bosse offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 7

Amend **CSHB 2912** beginning on page 9, line 19, through page 11, line 8, by striking proposed Sections 5.1191-5.1193, Water Code, and substituting the following:

Sec. 5.1191. RESEARCH MODEL. (a) In this section, "research model" means a mechanism for developing a plan to address the commission's practical regulatory needs. The commission's plan shall be prioritized by need and shall identify short-, medium-, and long-term research goals. The plan may address preferred methods of conducting the identified research.

(b) The commission shall develop a research model. The commission may appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. The research advisory board must include

representatives of the academic community, representatives of the regulated community, and public representatives of the state at large.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) The commission shall facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) The commission shall explore private and federal funding opportunities for research needs identified in the research model. The commission may conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) To the degree practicable, the commission, through the research model, shall coordinate with or make use of any research activities conducted under existing state initiatives, including research by state universities, the Texas Higher Education Coordinating Board, the U.S. Department of Agriculture, the Department of Agriculture, and other state and federal agencies as appropriate.

(d) This section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Sec. 5.1193. REPORT. The commission shall include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative McClendon offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 9

Amend **CSHB 2912** (Committee Printing) as follows:

(1) On page 11, line 10, strike "5.127-5.129" and substitute "5.127-5.130".

(2) On page 13, between lines 2 and 3, insert the following:

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. (a) In an administrative proceeding involving the siting, expansion, or operation of a facility in the local area in which other facilities are located, an affected party may offer, and the commission shall consider, evidence relating to cumulative risks, including:

(1) the effect of releases, emissions, or discharges from the facility and from other facilities in the area;

(2) the potential for exposure to a particular substance by means of multiple pathways; and

(3) the combined level of noise, odor, and other impacts from the facility and other facilities in the area.

(b) The commission shall:

(1) develop and implement policies to protect the public from cumulative risks, particularly in communities in which permitted facilities are concentrated; and

(2) give priority to monitoring and enforcement in areas in which permitted facilities are concentrated.

(c) The commission shall adopt rules as necessary to accomplish the purposes of this section.

Amendment No. 8

Representative Bosse offered the following amendment to Amendment No. 7:

Amend the Amendment by McClendon on **CSHB 2912** (on page 9 of packet) as follows:

(1) Strike Lines 5-15.

(2) On Line 16, amend subsection (b) to read as follows:

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. (a) The commission shall:

(1) develop and implement policies to protect the public from cumulative risks [particularly in communities in which permitted facilities are concentrated]; and

(2) give priority to monitoring and enforcement in areas in which regulated [permitted] facilities are concentrated.

(3) Strike Lines 22-23.

Amendment No. 8 was adopted without objection.

Amendment No. 7, as amended, was adopted without objection.

Amendment No. 9

Representative Burnam offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 10

Amend **CSHB 2912** on page 13, line 21, between "complaint" and the semicolon, by inserting ", unless the person has specifically requested anonymity".

Amendment No. 9 was adopted without objection.

Amendment No. 10

Representative Maxey offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 13

Amend **CSHB 2912** (Committee Printing) as follows:

(1) On page 13, line 16, between the period and "The", insert "(a)".

(2) On page 14, between lines 4 and 5, insert the following:

(b) The commission shall establish and implement procedures for receiving complaints submitted by means of the Internet and orally and shall maintain files on those complaints as provided by Subsection (a).

Amendment No. 10 was adopted without objection.

Amendment No. 11

Representative Puente offered the following amendment to **CSHB 2912**:
Floor Packet page No. 14.

Amend **CSHB 2912** as follows:

(1) On page 14, line 23, between "5.1772" and "to" add "and 5.1773".

(2) On page 15, between lines 26 and 27, add a new Section 5.1773 to read as follows:

Sec. 5.1773 PAYMENTS TO INDIVIDUALS. (a) The commission by rule shall provide for payments to a person who reports information concerning violations or suspected violations of environmental laws that substantially contributes to the assessment of a criminal, civil, or administrative penalty for the violation of such environmental law. The payment shall be in an amount equal to five percent of the fine or civil or administrative penalty ordered or agreed to by the alleged violator and collected by the state but not to exceed \$500.00, if the fine or penalty is attributable to information concerning a violation of an environmental law reported to the state by the person through use of a toll-free telephone line maintained in conjunction with the Smoking Vehicle hotline or otherwise.

(b) The state or local attorney in charge of the criminal prosecution of an alleged violator or the action to recover a civil or administrative penalty from an alleged violator shall determine whether information concerning the violation substantially contributed to obtaining the assessment of a criminal, civil, or administrative penalty or an agreement with the alleged violator for the payment of a fine or penalty.

(c) The commission by rule shall provide that an amount equal to not more than five percent of the total amount of fines or civil or administrative penalties assessed by the state or agreed to by the alleged violator and collected by the state in a fiscal year for an alleged violation of an environmental law shall be deposited into a special account in the general revenue fund to be used only for the investigation of alleged violations of environmental law and for payments authorized under this section.

(d) In this section, "environmental law" means a state or local statute, rule, order, ordinance, or other law that prohibits conduct that may result in pollution of the environment.

Representative Bosse moved to table Amendment No. 11.

The motion to table prevailed.

Amendment No. 12

Representative McClendon offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 16

Amend **CSHB 2912** as follows:

- (1) On page 15, line 19, strike "(a)".
- (2) On page 15, line 20, between "provide" and "response", insert "rapid".
- (3) On page 15, strike lines 22 through 26.

Amendment No. 13

Representative Bosse offered the following amendment to Amendment No. 12:

Amend the Amendment by McClendon on **CSHB 2912** (page 16 of packet) as follows:

- (1) Strike Line 2.

(2) On Line 4, substitute "rapid" with "timely".

(3) Strike Line 5.

Amendment No. 13 was adopted without objection.

Amendment No. 12, as amended, was adopted without objection.

Amendment No. 14

Representative Dukes offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 17

Amend **CSHB 2912** as follows:

(1) On page 14, line 23, strike "5.1771 and 5.1772" and substitute "5.1771, 5.1772, and 5.1773".

(2) On page 15, between lines 26 and 27, insert the following and renumber subsequent SECTIONS of the bill accordingly:

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) The commission annually shall conduct a comprehensive analysis of the complaints it receives, including analysis by the following categories:

(1) air;

(2) water;

(3) waste;

(4) priority classification;

(5) region;

(6) commission response;

(7) enforcement action taken; and

(8) trends by complaint type.

(b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.

SECTION 1.16. Section 5.178(b), Water Code, is amended to read as follows:

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Sections 361.0219(c), 361.0232, ~~[361.485;]~~ 361.510, 371.063, and 382.141, Health and Safety Code; ~~[and]~~

(B) the reports required by Section 26.0135(d) of this code and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; and

(C) a summary of the analyses and assessments required by Section 5.1773 of this code.

Amendment No. 14 was adopted without objection.

RECESS

Representative Burnam moved that the house recess until 1:30 p.m. today.

The motion prevailed without objection.

The house accordingly, at 11:59 a.m., recessed until 1:30 p.m. today.

AFTERNOON SESSION

The house met at 1:30 p.m. and was called to order by the speaker.

(Driver in the chair)

CSHB 2912 - (pending business)**Amendment No. 15**

Representative Burnam offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 19

Amend **CSHB 2912** as follows:

(1) On page 14, line 23, strike "Sections 5.1771 and 5.1772" and substitute "Sections 5.1771, 5.1772, 5.1773, and 5.1781".

(2) On page 15, between lines 26 and 27, add the following:

Sec. 5.1773. PROMPT RESPONSE TO CERTAIN COMPLAINTS; REPORT OF RESPONSE MEASURES. (a) The commission shall promptly respond to a complaint received by the commission involving a potential threat to public health and safety or to the environment and shall by rule establish the time within which the commission must respond to and investigate the complaint.

(b) The commission shall develop or acquire any resources that the commission determines are necessary to comply with Subsection (a).

(c) The commission shall file annually with the governor and the presiding officer of each house of the legislature a written report describing the resources that the commission determines are necessary to ensure and improve the commission's responses to complaints involving potential threats to public health and safety or to the environment.

Sec. 5.1781. AGENCY PERFORMANCE INDICATORS. The commission shall establish and track specific, measurable indicators of agency performance, including:

(1) the number of notices of violation and enforcement orders issued by the commission;

(2) the amount of administrative penalties assessed and collected; and

(3) the number of licenses and permits suspended or revoked.

(3) Add the following appropriately numbered new SECTION to the bill to read as follows and renumber subsequent SECTIONS of the bill appropriately:

SECTION _____. Not later than January 1, 2002, the Texas Natural Resource Conservation Commission shall adopt all rules necessary to implement Sections 5.1773 and 5.1781, Water Code, as added by this Act.

(Speaker in the chair)

Representative Bosse moved to table Amendment No. 15.

The motion to table prevailed.

Amendment No. 16

Representative McClendon offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 21

Amend **CSHB 2912**, on page 18, line 11, after the period by adding the following:

In developing the rules under this subsection the commission shall consider, among other factors:

- (1) the technical, legal, and financial capacity of the permit applicant;
- (2) whether the applicant has participated in a previous contested case hearing;
- (3) the complexity of the issues presented; and
- (4) the available resources of commission staff.

Amendment No. 17

Representative Bosse offered the following amendment to Amendment No. 16:

Amend the Amendment by McClendon on **CSHB 2912** (page 21 of packet) as follows:

- (1) Strike Line 6 and substitute as follows:
"parties to the proceeding;"
- (2) On line 7, substitute "applicant has" with "parties to the proceeding have".

Amendment No. 17 was adopted without objection.

Amendment No. 16, as amended, was adopted without objection.

Amendment No. 18

Representative Puente offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 24

Amend **CSHB 2912** (House Committee Printing) as follows:

- (1) On page 19, strike lines 9 through 20, and substitute the following:
SECTION 1.20. Subchapter G, Chapter 5, Water Code, is amended to read as follows:

SUBCHAPTER G. OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL

Sec. 5.271. DEFINITIONS. In this subchapter:

- (1) "Counsel" means the natural resource public interest counsel.
- (2) "Office" means the Office of Natural Resource Public Interest Counsel.
- (3) "Public interest" includes:
 - (A) any environmental, consumer, or community interest; and
 - (B) any right or privilege that promotes:
 - (i) public health;
 - (ii) environmental quality;
 - (iii) preservation of property or property rights; or
 - (iv) conservation or judicious use of the state's natural resources.

Sec. 5.272. CREATION AND GENERAL RESPONSIBILITY OF OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL. The Office of Natural Resource Public Interest Counsel is created to ensure that the public interest is represented in all matters before the commission.

Sec. 5.273. NATURAL RESOURCE PUBLIC INTEREST COUNSEL. (a) The governor with the advice and consent of the senate shall appoint a natural resource public interest counsel to serve as the executive director of the office.

(b) To be eligible to serve as counsel, a person must:

(1) be eligible to practice law in the state;

(2) have demonstrated a strong commitment to and involvement in environmental quality and consumer protection efforts; and

(3) have the knowledge and experience necessary to practice effectively in proceedings before the commission and in court.

(c) The counsel serves a two-year term that expires February 1 of each odd-numbered year.

(d) The counsel may serve on a board, committee, or advisory group unless prohibited by law.

Sec. 5.274. POWERS AND DUTIES OF COUNSEL AND COMMISSION.

(a) The counsel may represent the public interest in any issue that arises in a proceeding before the commission. The counsel is entitled to be admitted as a party to any proceeding before the commission.

(b) The counsel shall:

(1) implement this subchapter;

(2) administer the office;

(3) prepare and submit to the legislature a budget for the office;

(4) employ or contract with all professional, technical, and other personnel necessary to carry out this subchapter; and

(5) ensure that the office does not expend resources in proceedings in which the public interest is otherwise adequately represented.

(c) The counsel is responsible for approving actual and necessary expenditures incurred in administering the office, including expenses for professional services, travel, and per diem payments.

(d) The counsel may:

(1) recommend to the legislature legislation that in the counsel's judgment would protect consumers, public health, or the environment; or

(2) recommend to the commission rules or amendments to rules that in the counsel's judgment would protect consumers, public health, or the environment.

(e) The counsel shall participate in a meeting of any of the commission's advisory committees when necessary to ensure that the committee considers the public interest perspective.

(f) The commission shall provide the counsel a copy of each notice related to a matter under the jurisdiction of the commission that is required by statute or commission rule to be mailed, published, or posted in any manner by the commission or another person.

(g) The commission shall give the office access to the commission's technical staff and resources to assist the counsel in a proceeding before the commission. The commission is not required to give the office access to a technical staff member if the staff member is expected to participate in the proceeding on the commission's behalf.

Sec. 5.275. REPRESENTATION BY FORMER COUNSEL; PENALTY.

(a) A former counsel may not make any communication to or appearance

before the commission or an officer or employee of the commission before the second anniversary of the date the person ceases to serve as counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence a commission decision or action.

(b) A former counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the commission before the second anniversary of the date the person ceases to serve as counsel.

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor.

Sec. 5.276. JUDICIAL REVIEW AND APPEAL. The counsel may appeal on behalf of the public an action taken by the commission in a proceeding in which the counsel participated. The counsel may intervene as a matter of right or appear in any other appropriate capacity in a judicial proceeding that arises out of a commission proceeding in which the counsel participated.

~~[Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest counsel is created to ensure that the commission promotes the public's interest and is responsive to environmental and citizens' concerns including environmental quality and consumer protection.~~

~~[Sec. 5.272. PUBLIC INTEREST COUNSEL. The office shall be headed by a public interest counsel appointed by the commission. The executive director may submit the names and qualifications of candidates for public interest counsel to the commission.~~

~~[Sec. 5.273. DUTIES OF THE PUBLIC INTEREST COUNSEL. The counsel shall represent the public interest and be a party to all proceedings before the commission.~~

~~[Sec. 5.274. STAFF. The office shall be adequately staffed to carry out its functions under this code.~~

~~[Sec. 5.275. APPEAL. A ruling, decision, or other act of the commission may not be appealed by the counsel.]~~

(2) On page 114, between lines 17 and 18, insert the following section to the bill and renumber the subsequent section of the bill appropriately:

SECTION 10.12. CREATION OF OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL. (a) On January 1, 2002, all personnel, office space, facilities, equipment, information, records, case files, and other possessions of the office of public interest counsel of the Texas Natural Resource Conservation Commission are transferred to the Office of Natural Resource Public Interest Counsel created by this Act.

(b) On January 1, 2002, all unexpended and unobligated money appropriated to the Texas Natural Resource Conservation Commission for the fiscal biennium ending August 31, 2003, for use for the functions of the commission's office of public interest counsel is transferred to the Office of Natural Resource Public Interest Counsel created by this Act for use for the functions of that office.

(c) The Legislative Budget Board shall identify and inform the comptroller about the amount and source of money transferred under this section.

(d) The public interest counsel of the Texas Natural Resource Conservation Commission's office of public interest counsel shall serve as the natural resource public interest counsel of the Office of Natural Resource Public Interest Counsel from January 1, 2002, until the natural resource public interest counsel for the office is appointed and has qualified.

(e) The governor shall appoint a natural resource public interest counsel of the Office of Natural Resource Public Interest Counsel on or before February 1, 2003.

(f) The first budget proposed for the Office of Natural Resource Public Interest Counsel under Section 5.274, Water Code, as added by this Act, may not exceed the amount expended by the Texas Natural Resource Conservation Commission's office of public interest counsel in the previous fiscal biennium.

(g) Section 1.20 of this Act takes effect January 1, 2002.

Representative Bosse moved to table Amendment No. 18.

A record vote was requested.

The vote of the house was taken on the motion to table Amendment No. 18 and the vote was announced yeas 70, nays 73.

A verification of the vote was requested and was granted.

The roll of those voting nay was again called and the verified vote resulted, as follows (Record 152): 70 Yeas, 72 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Capelo; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Crabb; Crownover; Davis, J.; Delisi; Driver; Ehrhardt; Elkins; Ellis; George; Geren; Goolsby; Gray; Green; Grusendorf; Haggerty; Hardcastle; Hawley; Heflin; Hill; Homer; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Junell; Keffer; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Marchant; McCall; Merritt; Miller; Morrison; Mowery; Pitts; Seaman; Smithee; Swinford; Talton; Telford; Turner, B.; Uher; Walker; West; Williams; Wohlgemuth.

Nays — Bailey; Burnam; Chavez; Coleman; Craddick; Danburg; Davis, Y.; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farabee; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Gutierrez; Hamric; Hartnett; Hilderbran; Hinojosa; Hochberg; Hodge; Hope; Jones, J.; Keel; Kitchen; Lewis, G.; Lewis, R.; Luna; Madden; Martinez Fischer; Maxey; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Najera; Nixon; Noriega; Olivo; Pickett; Puente; Rangel; Raymond; Reyna, E.; Ritter; Sadler; Salinas; Shields; Smith; Solis; Solomons; Thompson; Tillery; Truitt; Turner, S.; Uresti; Villarreal; Wilson; Wise; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Wolens.

Absent — Callegari; Hilbert; Longoria; Oliveira; Ramsay; Reyna, A.

By unanimous consent, the house dispensed with the verification of those voting yea.

The speaker stated that the motion to table was lost by the above vote.

STATEMENTS OF VOTE

When Record No. 152 was taken, I was temporarily out of the house chamber. I would have voted no.

Longoria

When Record No. 152 was taken, I was in the house but away from my desk. I would have voted no.

A. Reyna

(Sadler in the chair)

A record vote was requested.

The vote of the house was taken on the adoption of Amendment No. 18 and the vote was announced yeas 73, nays 71.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 153): 74 Yeas, 70 Nays, 2 Present, not voting.

Yeas — Bailey; Burnam; Capelo; Chavez; Coleman; Danburg; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goodman; Gray; Gutierrez; Haggerty; Hamric; Hilderbran; Hinojosa; Hochberg; Hodge; Hope; Hopson; Jones, J.; Keel; King, P.; Kitchen; Lewis, G.; Longoria; Luna; Martinez Fischer; Maxey; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Najera; Noriega; Oliveira; Olivo; Pickett; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Salinas; Shields; Smith; Solis; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Wilson; Wise; Yarbrough; Zbranek.

Nays — Alexander; Allen; Averitt; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Callegari; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Driver; George; Geren; Goolsby; Green; Grusendorf; Hardcastle; Hartnett; Hawley; Heflin; Hill; Homer; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Junell; Keffer; King, T.; Kolkhorst; Krusee; Kuempel; Lewis, R.; Madden; Marchant; McCall; Merritt; Miller; Morrison; Nixon; Pitts; Reyna, E.; Seaman; Smithee; Solomons; Swinford; Talton; Telford; Uher; Walker; West; Williams; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker; Sadler(C).

Absent, Excused — Wolens.

Absent — Elkins; Hilbert; Mowery.

The chair stated that Amendment No. 18 was adopted by the above vote.

Amendment No. 19

Representative Burnam offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 32

Amend **CSHB 2912** as follows:

(1) On page 19, line 23, strike "EVIDENCE" and substitute "INFORMATION".

(2) On page 19, line 26, strike "evidence" and substitute "information".

(3) On page 19, line 27, strike "evidence" and substitute "information".

(4) On page 20, line 1, strike "meets the requirements of the Texas Rules of Evidence" and substitute "is of sufficient value and credibility to warrant the initiation of an enforcement action".

(5) On page 20, line 4, strike "evidence" and substitute "information".

(6) On page 20, line 5, strike "evidence" and substitute "information".

(7) On page 20, line 8, strike "evidence" and substitute "information".

(8) On page 20, line 9, strike "evidence" and substitute "information".

(9) On page 20, line 10, strike "evidence" and substitute "information".

(10) On page 20, line 14, strike "evidence" and substitute "information".

(11) On page 114, line 1, strike "EVIDENCE" and substitute "INFORMATION".

(12) On page 114, line 6, strike "evidence of" and substitute "information regarding".

(13) On page 114, line 9, strike "evidence of" and substitute "information regarding".

Amendment No. 19 was adopted without objection.

Amendment No. 20

Representative Puente offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 33

Amend **CSHB 2912** as follows:

On page 20, line 12, after the word "proceedings", insert a period and delete the remainder of the sentence.

Amendment No. 20 was adopted.

Amendment No. 21

Representative McClendon offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 34

Amend **CSHB 2912** (Committee Printing) as follows:

(1) On page 34, between lines 15 and 16, insert the following section, appropriately numbered:

SECTION _____. New Subchapter O, Chapter 5, Water Code, is amended by adding Section 5.6645 to read as follows:

Sec. 5.6645. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) An applicant for a permit under Chapter 361, Health and Safety Code, for a new facility that accepts municipal solid wastes shall hold a public meeting in the county in which the proposed facility is to be located. The meeting must be held before the 45th day after the date the application is filed.

(b) The applicant shall publish notice of the public meeting at least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.

(c) The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the application.

(e) The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.

(f) The meeting shall include a discussion of:

- (1) the compatibility of the proposed facility with relevant state or regional solid waste management plans;
- (2) other sites considered for the proposed facility and the process for selecting the site identified in the application;
- (3) potential benefits to the local community of constructing the proposed facility, including:

(A) employment opportunities and related job training to ensure that residents of the host community can compete for skilled and semiskilled employment at the facility;

(B) contributions by the facility to the community infrastructure, including road maintenance, park development, and litter control; and

(C) fair and reasonable compensation to owners of real property less than 2,640 feet from the facility for any decrease in the assessed value of the property attributable to the siting of the facility; and

(4) effects the facility may have on local residents, places of worship, schools, day-care centers, or surface water bodies used to supply public drinking water.

(g) The applicant shall mail to the commission a report of the proceedings of the meeting, including summaries of the information discussed and input received at the meeting. The report must be postmarked not later than the 30th day after the date the meeting concludes.

(2) On page 73, between lines 16 and 17, insert the following article, with the article and sections appropriately numbered:

ARTICLE __. RESTRICTIONS ON SITING, EXPANSION,
OR OPERATION OF CERTAIN FACILITIES

SECTION _____. Section 361.002, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) It is the state's policy to ensure that new solid waste facilities are not located disproportionately in low-income, minority, or other communities and that the adverse effects of solid waste facilities on the communities in which they are located are minimized, while ensuring that the state has adequate solid waste management capacity.

SECTION _____. Section 361.020(a), Health and Safety Code, is amended to read as follows:

(a) The commission shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic plan for the reduction of solid waste. The strategic plan shall include provisions to:

(1) ensure that new solid waste facilities are not located disproportionately in low-income, minority, or other communities to minimize the adverse effects of solid waste facilities on those communities; and

(2) require the consideration of the effect the presence of multiple sources of pollution and other nuisances may have on the community surrounding a solid waste facility.

SECTION _____. Section 361.0201(b), Health and Safety Code, is amended to read as follows:

(b) The plan shall:

(1) describe the capacity in the state to manage municipal waste through existing treatment or disposal facilities and identify all existing municipal solid waste management facilities in the state, their capacity, and their projected remaining useful life; ~~[and]~~

(2) analyze the state's capacity requirements over the planning periods specified in Section 361.020(c); and

(3) assess historical trends regarding the siting of solid waste facilities in low-income, minority, and other communities.

SECTION _____. Section 361.0216, Health and Safety Code, is amended to read as follows:

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction, ~~[and]~~ waste minimization, and environmental justice activities of the commission.

SECTION _____. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.034 to read as follows:

Sec. 361.034. REPORT. The commission shall submit a report not later than December 1 of each even-numbered year as required by Section 5.178(b), Water Code, that includes an evaluation of the implementation of the state's policy of ensuring that:

(1) new solid waste facilities are not located disproportionately in low-income, minority, or other communities; and

(2) the adverse effects of solid waste facilities on the communities in which they are located are minimized.

SECTION _____. Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.130 to read as follows:

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. (a) In an administrative proceeding involving the siting, expansion, or operation of a facility in the local area in which other facilities are located, an affected party

may offer, and the commission shall consider, evidence relating to cumulative risks, including:

(1) the effect of releases, emissions, or discharges from the facility and from other facilities in the area;

(2) the potential for exposure to a particular substance by means of multiple pathways; and

(3) the combined level of noise, odor, and other impacts from the facility and other facilities in the area.

(b) The commission shall:

(1) develop and implement policies to protect the public from cumulative risks, particularly in:

(A) low-income or minority communities; and

(B) communities in which permitted facilities are concentrated; and

(2) give priority to monitoring and enforcement in areas in which permitted facilities are concentrated.

(c) The commission shall adopt rules as necessary to accomplish the purposes of this section.

SECTION _____. Section 5.178(b), Water Code, is amended to read as follows:

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Sections 361.0219(c), 361.0232, 361.034, [~~361.485~~], 361.510, 371.063, and 382.141, Health and Safety Code; and

(B) the reports required by Section 26.0135(d) of this code and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985.

(3) renumber the articles and sections of the committee substitute accordingly.

Amendment No. 22

Representative Bosse offered the following amendment to Amendment No. 21:

Amend the McClendon amendment to **CSHB 2912** (page 34 of packet) by striking everything below page 2, line 6.

Amendment No. 22 was adopted without objection.

Amendment No. 21, as amended, was adopted without objection.

Amendment No. 23

Representative Solomons offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 40

Amend **CSHB 2912** on page 43, line 6, between "located" and the

semicolon, by inserting "if the portable facility has been located at the current site for less than two years".

Amendment No. 24

Representative Bosse offered the following amendment to Amendment No. 23:

Amend the Amendment by Solomons on **CSHB 2912** (page 40 of packet) as follows:

(1) Amend Lines 2-3 to read as follows:

and the semicolon, by inserting "if no [the] portable facility has been located at the proposed [current] site at any time during the previous [for less than] two years".

Amendment No. 24 was adopted without objection.

Amendment No. 23, as amended, was adopted without objection.

Amendment No. 25

Representative Edwards offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 42

Amend **CSHB 2912**, on page 43, line 3, between "(f)" and "This", by inserting the following:

For the purposes of Subsection (a), a newspaper or publication is generally circulated if the newspaper or publication is circulated over 75 percent of the applicable jurisdiction.

(g) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(h)

Amendment No. 26

Representative Edwards offered the following amendment to Amendment No. 25:

Amend Amendment No. 25 by to **CSHB 2912** (page 43, proposed amendments packet) by striking lines 3-9 and substituting the following:

The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(g)

Amendment No. 26 was adopted without objection.

Amendment No. 25, as amended, was adopted without objection.

Amendment No. 27

On behalf of Representative Counts, Representative Chisum offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 43

Amend **CSHB 2912** as follows:

(1) On page 45, line 26, after "Water Code," strike "and".

(2) On page 45, line 27 after "Section 5.701" and before "to read" add: "and amended by amending Subsection (e) and adding Subsections (p) and (q)"

(3) On page 47, strike lines 3-12 and substitute the following:

"(e) A person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion must pay a one-time nonrefundable application fee. The commission by rule may establish ~~[set]~~ the application fee in an amount sufficient to cover ~~[not to exceed]~~ the costs of reviewing and processing the application, plus the cost of required notice. The commission may also use the application fee to cover other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p). This fee is the only fee that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code."

(4) On page 51, line 2, at the end of SECTION 3.02 of the bill, add new subsections (p) and (q) as follows:

"(p) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under:

(1) Section 5.235(b), to the extent those fees are paid by water districts, and Sections 5.235(e), (f), and (n);

(2) Sections 13.4521 and 13.4522; or

(3) Section 54.037(c).

(q) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under:

(1) Sections 5.235(b) and (c), to the extent those fees are collected in connection with water use or water quality permits;

(2) Sections 5.235(h)-(l);

(3) Section 11.138(g);

(4) Section 11.145;

(5) Section 26.0135(h);

(6) Sections 26.0291, 26.044, and 26.0461;

(7) Sections 341.041, 366.058, and 366.059, Health and Safety Code;

or

(8) Section 372.002(d), Health and Safety Code."

(5) On page 53, line 20, at the end of ARTICLE 3, add a new SECTION 3.04 or other appropriately numbered SECTION as follows:

"SECTION 3.04. Section 341.041(a), Health and Safety Code, is amended to read as follows:

(a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system ~~[to recover the costs of public drinking water supply system programs or services authorized by this subchapter or performed pursuant to the requirements of the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)].~~ The commission may

establish a schedule of fees. The amount of the fees must be sufficient to cover ~~[may not exceed]~~ the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Among other factors, the commission shall consider equity among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.235(q), Water Code."

(6) On page 53, line 20, at the end of ARTICLE 3, after new SECTION 3.04 as described above, add a new SECTION 3.05 or other appropriately numbered SECTION as follows:

"SECTION 3.05 Section 366.058(a), Health and Safety Code, is amended to read as follows:

(a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. The commission may also use the fee to cover any other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.235(q), Water Code."

(7) On page 53, line 20, at the end of ARTICLE 3, after new SECTION 3.05 as described above, add a new SECTION 3.06 or other appropriately numbered SECTION as follows:

"SECTION 3.06. Section 366.059(b), Health and Safety Code, is amended to read as follows:

(b) The commission may assess a charge-back fee to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function ~~[that are not covered by the permit fees collected]~~. The commission may also use the fee to cover other costs incurred to protect water resources in this state reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.235(q), Water Code."

(8) On page 113, line 6, after "September 1, 2001.", add:

"Water resource management account balances dedicated to a particular purpose under the law as it exists prior to the changes in law made by this Act to redesignated Subsections 5.701(e), (p) and (q), Water Code, Sections 341.041(a), 366.058(a) and 366.059(b), Health & Safety Code that have not been expended before the effective date of this Act may be used for the purposes authorized under this Act."

Amendment No. 27 was adopted without objection.

Amendment No. 28

Representatives Chisum and Luna offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 45

Amend **CSHB 2912** as follows:

On page 53, strike lines 14-19, and substitute new Section 5.707, Water Code to read as follows:

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, the commission may transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. The use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use may not exceed seven percent or \$20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. A transfer of \$500,000 or more from one appropriation item to another appropriation item under this section must be approved by the commission at an open meeting subject to Chapter 551, Government Code.

Amendment No. 28 was adopted without objection.

Amendment No. 29

Representative Counts offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 46

Amend **CSHB 2912** as follows:

(1) On page 53, line 20, at the end of ARTICLE 3 of the bill, add a new SECTION 3.04 or other appropriately numbered SECTION of the bill as follows:

"SECTION 3.04. Section 26.0291, Water Code, is amended to read as follows:

Sec. 26.0291. WATER QUALITY ~~[WASTE TREATMENT INSPECTION]~~ FEE. (a) An annual water quality ~~[waste treatment inspection]~~ fee is imposed on:

(1) each wastewater ~~[permittee for each waste]~~ discharge permit holder for each wastewater discharge permit held; and

(2) each user of water in proportion to the user's water right, through permit or contract, as reflected in the commission's records ~~[by the permittee]~~.

(b) The fee is to supplement any other funds available to pay expenses of the commission related to:

(1) ~~[in]~~ inspecting waste treatment facilities; and

(2) enforcing the laws of the state and the rules of the commission governing:

(A) waste discharge and waste treatment facilities, including any expenses ~~[of the commission]~~ necessary ~~[to obtain from the federal government delegation of and]~~ to administer the national pollutant discharge elimination system (NPDES) program;

(B) the water resources of this state, including the water quality management programs under Section 26.0135; and

(C) any other water resource management programs reasonably related to the activities of the persons required to pay a fee under this section.

(c) The fee for each year is imposed on each permit or water right in effect during any part of the year. The commission may establish reduced fees for inactive permits.

(d) Irrigation water rights are not subject to a fee under this section.

(e) ~~(b)~~ The commission by rule shall adopt a fee schedule for determining the amount of the fee to be charged. The amount of the fee may not exceed \$75,000 ~~[\$25,000]~~ for each ~~[waste discharge]~~ permit or contract ~~[held by a permittee]~~. The maximum annual fee under this section for a wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility may not exceed \$75,000. In determining the amount of a fee under this section, the commission may consider:

(1) waste discharge permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutant, and heat load;

(2) ~~[- The commission may consider]~~ the designated uses and segment ranking classification of the water affected by discharges from the permitted facility;

(3) ~~[- Finally, the commission also may consider]~~ the expenses necessary to obtain and administer the NPDES program;

(4) the reasonable costs of administering the water quality management programs under Section 26.0135; and

(5) any other reasonable costs necessary to administer and enforce a water resource management program reasonably related to the activities of the persons required to pay a fee under this section. ~~[The commission shall not adopt any rule designed to increase the fee imposed under this section on a treatment works owned by a local government, as those terms are defined in Section 26.001 of this code, before August 31, 1999.]~~

(f) ~~(e)~~ The fees collected under this section shall be deposited to the credit of the water resource management account, an account in the general revenue fund.

(g) ~~(d)~~ The commission may adopt rules necessary to administer this section.

(h) ~~(e)~~ A fee collected under this section is in addition to any other fee that may be charged under this chapter."

(2) On page 53, line 20, at the end of ARTICLE 3 of the bill and after new SECTION 3.04 described above, add a new SECTION 3.05 or other appropriately numbered SECTION of the bill as follows:

"SECTION 3.05. Section 26.0135(h), Water Code, is amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section ~~[from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Irrigation water rights will not be subject to this assessment]~~. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring,

assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, ~~[that program funds are equitably apportioned among basins;]~~ that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed the cost for any efforts under this section that duplicate water quality management activities described in Section 26.177 of this chapter. ~~[The rules concerning the apportionment and assessment of reasonable costs shall provide for a recovery of not more than \$5,000,000 annually. Costs recovered by the commission are to be deposited to the credit of the water resource management account and may be used only to accomplish the purposes of this section. The commission may apply not more than 10 percent of the costs recovered annually toward the commission's overhead costs for the administration of this section and the implementation of regional water quality assessments. The commission, with the assistance and input of each river authority, shall file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.]"~~

(3) On page 53, line 20, at the end of ARTICLE 3 of the bill and after new SECTION 3.05 described above, add a new SECTION 3.06 or other appropriately numbered SECTION of the bill as follows:

"SECTION 3.06. Section 26.0135(j), Water Code, is repealed."

(4) On page 81, line 21, after SECTION 9.06 and before SECTION 9.07 of the bill, add a new SECTION 9.07 of the bill as follows:

"SECTION 9.07. Sections 26.0135(a) and (b), Water Code, are amended to read as follows:

(a) To ensure clean water, the commission shall establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. In order to conserve public funds and avoid duplication of effort, subject to adequate funding under Section 26.0291 ~~[Subsection (h)]~~, river authorities shall, to the greatest extent possible and under the supervision of the commission, conduct water quality monitoring and assessments in their own watersheds. Watershed monitoring and assessments involving agricultural or silvicultural nonpoint source pollution shall be coordinated through the State Soil and Water Conservation Board with local soil and water conservation districts. The water quality monitoring and reporting duties under this section apply only to a river authority that has entered into an agreement with the commission to perform those duties. The commission, either directly or through cooperative agreements and contracts with local governments, shall conduct monitoring and assessments of watersheds where a river authority is unable to perform an adequate assessment of its own watershed. The monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities. The assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic

materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed. The monitoring and assessment required by this section is a continuing duty, and the monitoring and assessment shall be periodically revised to show changes in the factors subject to assessment.

(b) In order to assist in the coordination and development of assessments and reports required by this section, a river authority shall organize and lead a basin-wide steering committee that includes persons paying fees under Section 26.0291 ~~[Subsection (h)]~~, private citizens, the State Soil and Water Conservation Board, representatives from other appropriate state agencies, political subdivisions, and other persons with an interest in water quality matters of the watershed or river basin. Based on committee and public input, each steering committee shall develop water quality objectives and priorities that are achievable considering the available technology and economic impact. The objectives and priorities shall be used to develop work plans and allocate available resources under Section 26.0291 ~~[Subsection (h)]~~. Each committee member shall help identify significant water quality issues within the basin and shall make available to the river authority all relevant water quality data held by the represented entities. A river authority shall also develop a public input process that provides for meaningful comments and review by private citizens and organizations on each basin summary report. A steering committee established by the commission to comply with this subsection in the absence of a river authority or other qualified local government is not subject to Chapter 2110, Government Code ~~[Article 6252-33, Revised Statutes]~~."

(5) On page 81, line 21, after SECTION 9.06 of the bill and SECTION 9.07 as described above, add a new SECTION 9.08 of the bill as follows:

"SECTION 9.08. Section 26.0135(d), Water Code, as amended by Chapters 101 and 1082, Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

(d) In the appropriate year of the cycle provided by commission rules adopted to implement Section 26.0285, each river authority shall submit a written summary report to the commission, State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality assessment of the authority's watershed. The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source of use impairment, and recommended actions the commission may take to address those concerns. The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process. A river authority shall submit a summary report after the report has been approved by the basin steering committee and coordinated with the public and the commission. A river authority shall hold basin steering committee meetings and shall invite users of water and wastewater permit holders in the watershed who pay fees under Section 26.0291 ~~[Subsection (h)]~~ to review the draft of the work plans and summary report. A river authority shall inform those parties

of the availability and location of the summary report for inspection and shall solicit input from those parties concerning their satisfaction with or suggestions for modification of the summary report for the watershed, the operation or effectiveness of the watershed monitoring and assessment program authorized by this section, and the adequacy, use, or equitable apportionment of the program's costs and funds. A river authority shall summarize all comments received from persons who pay fees under Section 26.0291 [~~Subsection (h)~~] and from steering committee members and shall submit the report and the summaries to the governor, the lieutenant governor, and the speaker of the house of representatives not later than the 90th day after the date the river authority submits the summary report to the commission and other agencies."

(6) On page 81, line 21 of the bill renumber SECTION 9.07 of the bill as SECTION 9.09 of the bill and renumber the subsequent sections appropriately.

(7) On page 113, line 6 of the bill, after "September 1, 2001." add:

"The change in law made by this Act to Sections 26.0135 and 26.0291, Water Code relating to the consolidation of certain fees relating to water quality takes effect September 1, 2002 and applies only to fees due on or after that date. The assessment and collection of fees due before the effective date of this Act are governed by the former law, and that law is continued in effect for that purpose. Water resource management account balances dedicated to a particular purpose under Sections 26.0135 and 26.0291, Water Code, as that law exists prior to the changes in law made by this Act that have not been expended before the effective date of this Act may be used for the purposes authorized by this Act."

Amendment No. 29 was adopted without objection.

Amendment No. 30

Representative Bosse offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 50

Amend **CSHB 2912** as follows:

(1) Strike SECTION 4.01 on page 53, line 21 through page 59, line 11, and substitute the following:

SECTION 4.01. Chapter 5, Water Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26 and 27 of this code and Chapters 361 and 382, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

Sec. 5.752. DEFINITIONS. In this subchapter:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent, decree, or other requirement.

(2) "Innovative program" means:

(A) a program developed by the commission under this subchapter, Chapter 26 or 27 of this code, or Chapter 361 or 382, Health and Safety Code, that provides incentives to a person in return for benefits to the

environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction;

(B) the flexible permit program administered by the commission under Chapter 382, Health and Safety Code; or

(C) the regulatory flexibility program administered by the commission under Section 5.758.

(3) "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under this code or the Health and Safety Code.

(4) "Region" means a region of the commission's field operations division or that division's successor.

(5) "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

Sec. 5.753. DEFINITION OF COMPLIANCE PERFORMANCE. (a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop a definition of compliance performance.

(b) The components of compliance performance must include:

(1) notices of violations, enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of the commission or the United States Environmental Protection Agency;

(2) notwithstanding any other provision of this code, orders issued under Section 7.070;

(3) to the extent readily available to the commission, enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states; and

(4) changes in ownership.

(c) The set of components must also include any information required by other law or any requirement necessary to maintain federal program authorization.

(d) Except as required by other law or any requirement necessary to maintain federal program authorization, the commission by rule shall establish a period for compliance performance.

Sec. 5.754. CLASSIFICATION AND USE OF COMPLIANCE PERFORMANCE. (a) The commission by rule shall establish a set of standards for the classification of a person's compliance performance.

(b) Rules adopted under this section must, at a minimum, provide for four classifications of compliance performance distinguishing among levels of performance from the lowest to the highest level.

(c) In classifying a person's compliance performance, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) specify that a repeat violator is an entity that has more than one violation of the same or similar type within the period established by the commission under Section 5.753(d); and

(3) consider the significance of the violation and whether the person is a repeat violator.

(d) The commission by rule shall establish methods of assessing the compliance performance of regulated entities for which it does not have adequate compliance information. The methods may include requiring a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(e) The commission by rule shall provide for the use of compliance performance classifications in commission decisions regarding:

(1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(2) enforcement;

(3) the use of announced inspections; and

(4) participation in innovative programs.

(f) Rules adopted under Subsection (e) for the use of compliance performance shall provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is in the lowest classification developed under this section.

(g) The commission by rule shall, at a minimum, prohibit a person whose compliance performance is classified in the lowest classification developed under this section from:

(1) receiving an announced inspection; and

(2) participating in the flexible permit program administered by the commission under Chapter 382, Health and Safety Code, and the regulatory flexibility program administered by the commission under Section 5.758.

Sec. 5.755. STRATEGICALLY DIRECTED REGULATORY STRUCTURE. (a) The commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance.

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance performance classification; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization.

Sec. 5.756. COLLECTION AND ANALYSIS OF COMPLIANCE PERFORMANCE INFORMATION. (a) The commission shall collect data on:

(1) the results of inspections conducted by the commission;

(2) whether inspections are announced or unannounced;

(3) the number and percentage of all violations committed by persons who previously have committed the same or similar violations;

(4) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order;

(5) whether a violation is of major, moderate, or minor significance, as defined by commission rule;

(6) whether a violation relates to an applicable legal requirement pertaining to air, water, or waste; and

(7) the region in which the facility is located.

(b) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(c) The commission shall include in the annual enforcement report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997, the comparative performance analysis required by Subsection (b), organized by region and regulated medium.

Sec. 5.757. COORDINATION OF INNOVATIVE PROGRAMS. (a) The commission shall designate a single point of contact within the agency to coordinate all innovative programs.

(b) The coordinator shall:

(1) inventory, coordinate, and market all innovative programs;

(2) provide information and technical assistance to persons participating in or interested in participating in those programs; and

(3) work with the pollution prevention advisory committee to assist the commission in integrating the innovative programs into the commission's operations, including:

(A) program administration;

(B) strategic planning; and

(C) staff training.

(2) On page 59, line 15, strike "5.760" and substitute "5.758".

(3) On page 59, line 16, strike "5.760" and substitute "5.758".

(4) On page 62, strike lines 22-25 and substitute the following:

(c) The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.

(5) On page 83, strike lines 21 through 25 and substitute the following:

(4) the commission determines that an applicant's compliance performance under the method for evaluating compliance performance developed by the commission under Section 5.754 [history for the preceding five years] raises no issues regarding the applicant's ability to comply with a material term of its permit.

(6) On page 84, line 19, strike "HISTORY" and substitute "PERFORMANCE".

(7) On page 84, line 22, strike "history" and substitute "performance".

(8) On page 84, line 24, strike "history" and substitute "performance".

(9) On page 86, lines 18 through 22, strike "history" and the underlined language and substitute: "performance is in the lowest classification under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections [history]."

(10) On page 88, strike lines 21 and 22 and substitute the following:

SECTION 9.12. Section 27.051, Water Code, is amended by amending Subsections (d) and (e) and adding Subsection (h) to read as follows:

(11) On page 89, line 1, strike "history" and substitute "performance [history]".

(12) On page 89, line 2, strike "history" and substitute "performance".

(13) On page 89, strike lines 22 through 26 and substitute the following:

(e) Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the [The] commission shall establish a procedure for preparing summaries of the applicant's compliance performance [by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules

(14) On page 90, line 2, strike "compliance" and substitute "[compliance]".

(15) On page 90, line 11, following the period, insert the following:
In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance performance of an applicant for an injection well may be offered by the executive director at a hearing on the application and may be admitted into evidence, subject to the rules of evidence.

(16) On page 90, line 12, strike "history" and substitute "performance [history]".

(17) On page 90, between lines 14 and 15, insert the following:

(h) In determining whether the use or installation of an injection well is in the public interest under Subsection (a)(1), the commission shall consider the compliance performance of the applicant in accordance with Subsection (e) and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections.

(18) On page 93, line 7, strike "361.084(a) and (c)" and substitute "361.084(a), (c), and (d)".

(19) On page 93, line 12, strike "history" and substitute "performance".

(20) On page 93, lines 17 through 20, strike the language that begins with "during" and ends with "concerning" and substitute "[in the preceding five years] concerning".

(21) On page 93, between lines 24 and 25, insert the following:

(d) The commission shall consider all evidence admitted, including compliance performance [history], in determining whether to issue, amend, extend, or renew a permit.

(22) On page 94, lines 5 through 7, strike the language that begins with "history" and ends with "raises" and substitute: "performance under the method for evaluating compliance performance developed by the commission under Section 5.754, Water Code, [history for the preceding five years] raises".

(23) On page 94, lines 18 through 22, strike the underlined language and substitute: "having a compliance performance that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections".

(24) On page 95, line 5, between "the" and "permit", insert "applicant or".

(25) On page 95, lines 5 through 9, strike the underlined language and substitute the following:

"compliance performance that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections".

(26) On page 96, lines 1 through 5, strike the underlined language and substitute the following:

"the applicant or permit holder has a compliance performance that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections".

- (27) On page 96, line 21, strike "history" and substitute "performance".
- (28) On page 96, line 22, strike "history" and substitute "performance".
- (29) On page 96, line 24, strike ", for the consideration of compliance history".
- (30) On page 97, line 19, strike "history" and substitute "performance of the owner or operator".
- (31) On page 97, line 21, strike ", for the consideration of compliance history".
- (32) On page 101, strike lines 3 through 6 and substitute the following: "compliance performance that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections [~~history contains~~"]".
- (33) On pages 102, 103, and 104, strike SECTIONS 9.31 and 9.32 and appropriately renumber subsequent sections in Article 9.
- (34) On page 111, line 9, strike "March" and substitute "February".
- (35) On page 111, lines 10 and 11, strike "and standards for evaluating compliance history" and substitute "compliance performance".
- (36) On page 111, line 11, strike "5.754" and substitute "5.753".
- (37) On page 111, lines 14 through 16, strike all between "Commission" and the period and substitute "by rule shall establish the standards for the classification and use of compliance performance, as required by Section 5.754, Water Code, as added by this Act".
- (38) On page 111, strike lines 17 through 22 and substitute the following:
- (c) Not later than September 1, 2003, the Texas Natural Resource Conservation Commission by rule shall establish interim incentives as part of the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act.
- (d) Not later than September 1, 2005, the Texas Natural Resource Conservation Commission by rule shall complete all rules necessary for the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act.
- (e) The Texas Natural Resource Conservation Commission shall report to the 78th and 79th legislatures regarding the implementation of the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act. The reports must include recommendations regarding statutory impediments to program implementation, progress in the development of rules and incentives, participation in the program, changes in federal statutes and policies affecting implementation of the program, and benefits accruing to the environment from the program. A report required by this subsection shall be filed not later than December 15 of the year preceding the year in which the legislative session begins.
- (39) On page 111, line 23, strike "(d)" and substitute "(f)".
- (40) On page 111, line 24, strike "history" and substitute "performance".
- (41) On page 112, line 2, strike "March" and substitute "February".
- (42) On page 112, line 3, strike "5.757" and substitute "5.754".
- (43) On page 112, line 6, strike "382.055, 382.056, 401.110, and 401.112" and substitute "382.055, and 382.056".
- (44) On page 112, line 7, strike "(e)" and substitute "(g)".

- (45) On page 112, line 8, strike "history" and substitute "performance".
- (46) On page 112, line 10, strike "Sections 5.758 and 5.759" and substitute "Section 5.754".
- (47) On page 112, line 11, strike "March" and substitute "February".
- (48) On page 112, line 14, strike "(f)" and substitute "(h)".
- (49) On page 112, line 15, strike "history" and substitute "performance".
- (50) On page 112, line 19, strike "March" and substitute "February".
- (51) On page 112, strike lines 20 through 26.

Amendment No. 30 was withdrawn.

Amendment No. 31

Representative Maxey offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 61

Amend **CSHB 2912** (committee printing) as follows:

- (1) On page 55, line 18, strike "and market" and substitute "market, and evaluate".
- (2) On page 58, line 19, strike "guidelines" and substitute "criteria and procedures".
- (3) On page 59, line 1, strike "good" and substitute "high performance".

Amendment No. 31 was adopted without objection.

Amendment No. 32

Representative Puente offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 62

Amend **CSHB 2912** as follows:

On page 57, strike lines 6 through 24 and replace with the following new Sec. 5.755:

Sec. 5.755. REPORTS. (a) The commission shall collect data on the results of inspections conducted by the commission.

(b) The commission shall collect data on and make available to the public on the Internet:

(1) the number and percentage of all violations committed by repeat offenders;

(2) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order; and

(3) whether the violations are significant or minor, as defined by commission rule.

(c) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(d) The commission must include in the annual enforcement report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997, the comparative performance analysis required by Subsection (b), organized by region and by regulated medium.

Amendment No. 32 was adopted without objection.

Amendment No. 33

Representative Dukes offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 63

Amend **CSHB 2912** as follows:

(1) On page 58, line 18, between the period and "The", insert "(a)".

(2) On page 58, between lines 24 and 25, insert the following:

(b) The guidelines shall:

(1) specify the circumstances in which the commission shall revoke the permit of a repeat violator; and

(2) establish enhanced administrative penalties for repeat violators.

(c) If the commission imposes an administrative penalty on a repeat violator in an amount less than that provided by the guidelines, the commission shall publish in the Texas Register the commission's reason for deviating from the guidelines.

Amendment No. 34

Representative Dukes offered the following amendment to Amendment No. 33:

Amend Amendment No. 33 by Dukes to **CSHB 2912** (page 63, proposed amendments packet) by striking lines 11-14.

Amendment No. 34 was adopted without objection.

Amendment No. 33, as amended, was adopted without objection.

Amendment No. 35

Representatives Cook and Uher offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 64

Amend **CSHB 2912** as follows:

(1) On page 60, strike lines 16 through 18 and insert the following:

~~[(f) A permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.]~~

(2) On page 60, line 19, strike "~~(h) [(g)]~~" and substitute "(g)".

(3) On page 60, line 22, strike "~~(i) [(h)]~~" and substitute "(h)".

Amendment No. 35 was adopted without objection.

Amendment No. 36

Representative Hochberg offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 66

Amend **CSHB 2912** beginning on page 63, line 7, and ending on page 66, line 3, by striking SECTION 4.06 and substituting the following new SECTION 4.06:

SECTION 4.06. (a) Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0215 and 382.0216 to read as follows:

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS

EVENTS. (a) In this section, "emissions event" includes an upset, maintenance, startup, or shutdown activity that results in the unauthorized emissions of air contaminants.

(b) The commission shall require the owner or operator of a facility that experiences emissions events:

(1) to maintain a record of all emissions events at the facility in the manner and for the periods prescribed by commission rule;

(2) to notify the commission, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting facility;

(B) the location of the reporting facility;

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(c) The owner or operator of a facility required by Section 382.014 to submit an annual emissions inventory report must include as part of the inventory:

(1) an itemized list of each emissions event at the facility, including the quantity of air contaminants emitted; or

(2) if no emissions event occurred at the facility, a statement to that effect.

(d) The commission shall centrally track emissions events and collect information relating to:

(1) inspections or enforcement actions taken by the commission in response to emission events; and

(2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.

(e) The commission shall develop the capacity for electronic reporting and shall incorporate reportable emissions events into a permanent centralized database for emissions events. The database shall be accessible to the public.

(f) The commission annually shall assess the information received under this section, including actions taken by the commission in response to the report required by Section 5.123, Water Code, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) The commission shall require the owner or operator of a facility to take action to reduce emissions. The commission shall require an owner or operator of a facility required to take action under this subsection to file with the commission a corrective action plan to reduce emissions from emissions events. If in a particular case a corrective action plan is impracticable, the commission shall require the owner or operator of the facility to apply for a permit or permit modification.

(b) A corrective action plan filed under Subsection (a) must identify the cause or causes of each emissions event, specify the control devices or other measures that will prevent or minimize similar emissions events in the future, and specify a time within which implementation of the corrective action plan will be completed. A corrective action plan must be approved by the commission. An approved corrective action plan shall be made available to the public. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events.

(c) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the frequency and duration of the emissions event, the cause of the emissions event, the quantity and toxicity of the emissions resulting from the emissions event, and the impact of the emissions event on the local area's air quality. The rules must specifically provide that:

(1) an affirmative defense does not apply to emissions that result from normal startup and shutdown, normal maintenance procedures, the lack of preventive maintenance, or operator error; and

(2) a person may not raise an affirmative defense for an emissions event that is part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(d) The burden of proof in any claim of a defense to commission enforcement action under this section is on the person claiming the defense. This section does not limit the commission's authority to take enforcement action or the authority or right of any person to seek injunctive relief in relation to any emissions event.

(e) A person may not claim a defense to a commission enforcement action under Subsection (c) if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs.

(b) The Texas Natural Resource Conservation Commission shall implement all technical and equipment changes necessary for compliance with Sections 382.0215(d) and (e), Health and Safety Code, as added by this Act, not later than January 1, 2003. After implementation of the necessary technical and equipment changes, the Texas Natural Resource Conservation Commission by rule shall require electronic reporting of reportable emissions events to the centralized database.

Amendment No. 37

Representative Hochberg offered the following amendment to Amendment No. 36:

Amend the Hochberg amendment (page 66 of the amendment packet) on page 3, line 12, between "emissions" and the period, by inserting "from emissions events required to be reported under Sections 382.0215(b) (3)".

Amendment No. 37 was adopted without objection.

Amendment No. 38

Representative Hochberg offered the following amendment to Amendment No. 36:

Amend the Hochberg amendment (page 66 of the amendment packet) on page 3, line 25, between "commission." and "An approved", by inserting "If the commission has not disapproved of a proposed corrective action plan before the 45th day after the date the commission receives the proposed plan, the plan is approved and the owner or operator of the facility must implement the plan. The commission shall emphasize reviewing for approval or disapproval proposed corrective action plans for emissions events that present the greatest concern to the public health or safety considering the factors provided by Section 382.0215(b)(3)(E)".

Amendment No. 38 was adopted without objection.

Amendment No. 39

Representative Hochberg offered the following amendment to Amendment No. 36:

Amend the Hochberg amendment to **CSBH 2912** that relates to emissions events as follows:

(1) On page 4, line 5, between "(c)" and "The", insert the following: "An owner or operator of a facility for which a report is required under Section 382.0215(b)(3) may file a corrective action plan with that report.
(d)".

(2) On page 4, line 21, strike "(d)" and substitute "(e)".

(3) On page 4, line 27, strike "(e)" and substitute "(f)".

(4) On page 5, line 1, strike "(c)" and substitute "(d)".

Amendment No. 39 was adopted without objection.

Amendment No. 36, as amended, was adopted without objection.

Amendment No. 40

Representative Zbranek offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 72

Amend **CSHB 2912** on page 66, between lines 3 and 4, by adding the following sections, numbered appropriately:

SECTION 4.____. Sections 382.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate a ~~[an existing]~~ facility for which a person is not required to apply for a permit under Section 382.0518 because of the exemption under Section 382.0518(g) [under a voluntary emissions reduction permit]; or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519; ~~[or]~~

(7) a small business stationary source permit under Section 382.05185;

(8) an electric generating facility permit under Section 39.264, Utilities Code, and Section 382.05186;

(9) a pipeline facilities permit under Section 382.05187; or

(10) other permits as necessary.

SECTION 4. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05181-382.05187 to read as follows:

Sec. 382.05181. PERMIT REQUIRED. (a) This section:

(1) applies only to a facility for which a person is not required to apply for a permit under Section 382.0518 because of the exemption under Section 382.0518(g); and

(2) does not apply to a facility that is eligible for a permit under Section 382.05185 or 382.05186.

(b) Except as provided by Subsections (c) and (d), a facility that has not obtained a permit under this subchapter other than a permit under Section 382.054 may not emit air contaminants on or after:

(1) September 1, 2002, if the facility is located in the East Texas or El Paso region established by Section 382.05182; or

(2) September 1, 2003, if the facility is located in the West Texas region established by Section 382.05182.

(c) A facility is not subject to Subsection (b) if the owner or operator of the facility:

(1) has filed a notice of shutdown for the facility under Section 382.05184; or

(2) has pending before the commission an application for a permit under this subchapter for the facility, other than a permit under Section 382.054.

(d) A facility that is permitted under this subchapter may not emit air contaminants on or after the following date unless the facility is in full compliance with the conditions of the permit, including a permit requirement to install emissions controls or to reduce emissions of air contaminants:

(1) September 1, 2005, for a facility located in the East Texas region or the El Paso region established by Section 382.05182; or

(2) September 1, 2006, for a facility located in the West Texas region established by Section 382.05182.

(e) An application for a permit under this subchapter for a facility is subject to the notice and hearing requirements provided by Section 382.056. The commission shall review promptly each application for a permit under this subchapter, other than a permit under Section 382.054, that is submitted for a facility to which this section applies. If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency to the applicant and order the applicant to provide the information not later than the 60th day after the date the notice of deficiency is issued. If the applicant does not provide the commission the information on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this subchapter for a facility to which this subchapter applies not later than the first anniversary of the date on which the commission receives an administratively complete application. A person affected by a failure of the commission to take final action by the date provided by this section may obtain judicial review under Section 382.032 at any time before the commission takes final action. A reviewing court may order the commission to act on the application without delay only if the court finds that the commission's failure to take the final action is arbitrary or unreasonable.

Sec. 382.05182. EAST TEXAS, WEST TEXAS, AND EL PASO REGIONS. For purposes of this subchapter:

(1) the East Texas region consists of Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties, each county traversed by or east of Interstate Highway 35 north of San Antonio, and each county traversed by or east of Interstate Highway 37 south of San Antonio;

(2) the El Paso region consists of El Paso County; and

(3) the West Texas region consists of all areas of this state not contained in the East Texas or El Paso regions.

Sec. 382.05183. PERMITTING AND PERMIT AMENDMENT PROCEDURES FOR CERTAIN PERMITS FOR CERTAIN EXEMPT FACILITIES. (a) Chapter 2001, Government Code, does not apply to an application for a permit or permit amendment under this subchapter for a facility for which a person is not required to apply for a permit under Section 382.0518 because of the exemption under Section 382.0518(g) if the commission determines that the draft permit, or the draft permit amendment together with the permit, if issued, would result in a reduction in the total emissions of air contaminants from the facility to a level that is 40 percent or more below 1997 emissions levels as reported to the commission.

(b) This section does not apply to a facility eligible for a permit under Section 382.05185 or 382.05186.

Sec. 382.05184. NOTICE OF SHUTDOWN. (a) The owner or operator of a facility may file a notice of shutdown only before:

(1) September 1, 2002, if the facility is located in the East Texas or El Paso region established by Section 382.05182; or

(2) September 1, 2003, if the facility is located in the West Texas region established by Section 382.05182.

(b) A notice of shutdown must include:

(1) the date by which the facility will cease operations;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases operations; and

(3) any other information the commission by rule establishes as necessary and relevant.

Sec. 382.05185. SMALL BUSINESS STATIONARY SOURCE PERMIT.

(a) This section applies only to a facility for which a person is not required to apply for a permit under Section 382.0518 because of the exemption under Section 382.0518(g) that is located at a small business stationary source, as defined by Section 382.0365(h).

(b) A facility that is not required by commission rules to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2003.

(c) A facility may not emit air contaminants on or after September 1, 2006, unless the owner or operator of the facility:

(1) has filed a notice of shutdown for the facility under Section 382.05184;

(2) has obtained a permit under this subchapter, other than a permit under Section 382.054; or

(3) has pending before the commission an application for a permit under this subchapter for the facility, other than a permit under Section 382.054.

(d) The commission shall grant a permit for a facility under this section if, from information available to the commission, it finds no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property. If the commission finds that the emissions from the proposed facility will contravene the intent of this chapter, the commission may not grant the permit under this section.

(e) A person must obtain a permit under Section 382.0518 before modifying a facility permitted under this section.

Sec. 382.05186. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural gas fired electric generating facility for which a permit under Section 39.264, Utilities Code, has been obtained or for which an application for a permit under that section is pending before the commission; or

(2) an electric generating facility excluded from permit requirements of Section 39.264, Utilities Code, under Subsection (d) of that section.

(b) An electric generating facility, including a coal-fired facility, that is required to obtain and has obtained a permit under Section 39.264, Utilities Code, and that is not described by Subsection (a) of this section is considered permitted under this section for:

(1) emissions of nitrogen oxides;

(2) emissions of sulphur dioxide; and

(3) as provided by commission rules, opacity.

(c) An electric generating facility described by Subsection (b) is not considered permitted under this section for air contaminants other than those specified by Subsection (b). The commission may issue a permit under this section for a facility's emissions of other air contaminants if the commission finds from information available to the commission that the emissions will not contravene the intent of this chapter, including protection of the public's health and physical property. On the request of a person for whom an application for a permit under Section 39.264, Utilities Code, is pending before the commission, the commission shall include in that application process the person's application for a permit under this subsection.

(d) Before September 1, 2002, the owner or operator of an electric generating facility permitted under Section 39.264, Utilities Code, or for which an application for a permit under that section is pending before the commission, may apply for a permit under this section for another facility located at the same site if the other facility does not generate electricity for compensation and is:

(1) a generator that is used for 10 percent or less of the normal annual operating schedule; or

(2) an auxiliary fossil fuel fired combustion facility that is not a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602).

(e) The commission by rule shall provide for emissions from facilities permitted under Subsection (d) to be included in the emissions allowance trading program established under Section 39.264, Utilities Code. The commission may not issue a new allowance under the program based on a permit issued under this section.

(f) A permit application under Subsection (c) or (d) is subject to the notice and hearing requirements provided by Section 382.05191.

(g) A person must obtain a permit under Section 382.0518 before modifying a facility permitted under this section.

(h) For the purposes of Subsection (a)(1), a natural gas fired electric generating facility includes a facility capable of burning natural gas or a fuel oil of a grade allowed by commission rule. The commission shall adopt rules regarding allowed grades of fuel oil for purposes of this section. The rules must provide that the amount and grade of fuel oil used may not increase emissions from the facility above allowable limits.

Sec. 382.05187. AUTHORIZATION FOR PIPELINE FACILITIES. (a) This section applies only to natural gas processing, treating, or compression facilities in existence on the effective date of this section that are connected to or part of a natural gas gathering or transmission pipeline for which a person is not required to apply for a permit under Section 382.0518 because of the exemption under Section 382.0518(g).

(b) The commission by rule shall provide for:

(1) the issuance of a single permit for all facilities connected to or part of a natural gas gathering or transmission pipeline;

(2) a means for mandatory emissions reductions for facilities permitted under this section to be achieved;

(A) at one source; or

(B) by averaging reductions among more than one source connected to or part of a natural gas gathering or transmission pipeline; and

(3) an owner or operator of a facility to apply for separate authorizations under this section for discrete and separate facilities connected to or part of a natural gas gathering or transmission pipeline.

(c) The commission shall issue a permit under this section to an owner or operator of a facility or facilities if, from information available to the commission, the commission finds that:

(1) the facility will use a pollution control technology at least as beneficial as the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; or

(2) aggregate emissions of air contaminants averaged among the several facilities will not exceed the emissions that would be authorized if the facilities used the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facilities.

(d) A person must obtain a permit under Section 382.0518 before modifying a facility permitted under this section.

SECTION 4.____. Sections 382.05191 and 382.05192, Health and Safety Code, are amended to read as follows:

Sec. 382.05191. [~~VOLUNTARY~~] EMISSIONS REDUCTION PERMIT[:]
NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05186, 382.05187, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 382.0365(h) [~~382.0365(g)(2)~~] to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05186, 382.05187, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a [~~voluntary emissions reduction~~] permit under Section 382.05186, 382.05187, or 382.0519 may move for rehearing and is entitled to judicial review under Section 382.032.

Sec. 382.05192. REVIEW AND RENEWAL OF [~~VOLUNTARY~~] EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05186, 382.05187, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

SECTION 4.____. Section 382.0621(d), Health and Safety Code, is amended to read as follows:

(d) Except as provided by this subsection [~~section~~], the commission may

not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. The commission shall impose a fee on the aggregate emissions from all stationary sources located on one or more contiguous or adjacent properties that are under common control of the same person or of persons under common control. The fee must apply only to a facility or group of facilities for which a person is not required to apply for a permit under Section 382.0518 because of the exemption [On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit] under Section 382.0518(g), for which a permit under this subchapter, other than a permit under Section 382.054, has not been issued, for which an application for a permit under this subchapter, other than a permit under Section 382.054, is not pending before the commission, and for which a notice of shutdown has not been filed under Section 382.05184. For aggregate emissions from those facilities [that does not have a permit application pending], the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

Amendment No. 41

Representative Chisum offered the following amendment to Amendment No. 40:

Amend the Amendment (page 72 of the amendment packet) to **CSHB 2912** by deleting lines 3 - 29, page 1 and by deleting pages 2 through 10 and inserting the following:

SECTION 1. Subsections (a) and (b), Section 382.051, Health and Safety Code, are amended to read as follows:

(a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate a [an] facility described by Section 382.0518(g) [under a voluntary emissions reduction permit]; or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519; ~~[or]~~

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

- (8) a small business stationary source permit under 382.05184;
- (9) an electric generating facility permit under Section 382.05185 and Section 39.264, Utilities Code;
- (10) an authorization under Section 382.05186; or
- (11) other permits as necessary.

SECTION 2. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05181-Section 382.05186, to read as follows:

Section 382.05181. PERMIT REQUIRED. (a) Any facility described by Section 382.0518(g) that does not have an application pending for a permit or other authorization under this Chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003 if the facility is located in an area designated as nonattainment for a national ambient air quality standard as of September 1, 2001; or

(2) September 1, 2005 if the facility is located in an area other than a nonattainment area as of September 1, 2001.

(b) Any facility described by Section 382.0518(g) that does not have a permit or other authorization under this Chapter, other than a permit required under Section 382.054, may not emit air contaminants on or after:

(1) September 1, 2005 if the facility is located in an area designated as nonattainment for a national ambient air quality standard as of September 1, 2001; or

(2) September 1, 2007 if the facility is located in an area other than a nonattainment area as of September 1, 2001.

(c) Facilities eligible for a permit under Section 382.05184 are not subject to this section.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions which will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

SECTION 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility described by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment the commission finds that the application demonstrates compliance with:

(1) Section 382.003(9)(e)(ii) if the permit application is filed before September 1, 2002; or

(2) Section 382.0518(b) if the permit application is filed:

(A) before September 1, 2003 if the facility is located in an

area designated as nonattainment for national ambient air quality standards as of September 1, 2001; and

(B) before September 1, 2005 if the facility is located in an area other than a nonattainment area as of September 1, 2001.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site described by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error. If while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, the commission may request the information and set a reasonable deadline for a response. Failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities described by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 382.0365(h)(2), and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2005.

(b) Facilities described by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit or other authorization under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after September 1, 2007.

(c) The commission shall grant a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

(h) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error. If while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, the commission may request the information and set a reasonable deadline for a response. Failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under 39.264(d), Utilities Code.

(b) Electric generating facilities, including coal-fired electric generating facilities, that are required to obtain a permit under Section 39.264, Utilities Code, and are not described by Subsection (a):

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulfur dioxide and as provided by commission rules for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) are not considered permitted for criteria pollutants not described by Subdivision (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subdivision (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002 for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code is:

(1) a generator that does not generate electric energy for compensation and is used no more than ten percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy for compensation.

(e) Nitrogen oxide emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission shall not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For purposes of this section, a natural gas-fired electric generating facility is one which is capable of burning natural gas or a fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades which shall require that the amount and grade of fuel oil used to not increase emissions above allowable limits.

Section 382.05186. AUTHORIZATION FOR PIPELINE FACILITIES. (a) The commission by rule shall establish the procedures for applications for existing processing, treating, compression or pumping facilities described by Section 382.0518(g) connected to or part of a gathering or transmission pipeline.

(b) Based on a prioritization by the commission as necessary to meet local, regional and statewide air quality needs related directly or indirectly to federal air quality standards, the commission may require up to a 20 percent reduction of the hourly emission rate, in terms of grams per brake horsepower-hour, of nitrogen oxide and may also require up to a 20 percent reduction of the hourly emission rate, in terms of grams per brake horsepower-hour, of volatile organic compounds from reciprocating internal combustion engines subject to this section. The commission may consider requiring up to a 20 percent reduction of the hourly emission rate of nitrogen oxide and may also consider requiring up to a 20 percent reduction of the hourly emission rate of volatile organic compounds from facilities other than reciprocating internal combustion engines that are connected to or part of a gathering or transmission pipeline. The commission may by rule designate counties or regions of the state where greater reductions of emissions will be required than in other areas, but no more than 20 percent emissions reductions may be required in any area.

(c) The commission shall:

(1) allow for a single permit for all facilities connected to or part of a gas gathering or transmission pipeline;

(2) allow for required reductions for facilities under this section to be achieved at one facility or averaged among more than one facility and located in the same local, regional or statewide areas designated by the commission under subsection (b);

(3) for purposes of emission averaging, allow emission reductions achieved from facilities defined by Section 382.0518(g) since September 1, 1997; and

(4) allow an owner or operator to apply for separate permits under this section for discreet and separate facilities connected to or part of a gathering or transmission pipeline.

(d) Facilities authorized by this section shall be considered permitted under this chapter.

(e) The commission shall issue a permit under this section if the requirements of this section are met.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error. If while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, the commission may request the information and set a reasonable deadline for a response. Failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 3. Amend Section 382.05191, Subchapter C, Health and Safety Code, to read as follows:

SECTION 382.05191. ~~[VOLUNTARY]~~ EMISSIONS REDUCTION PERMITS ~~[PERMIT]~~ NOTICE AND HEARING. (a) An applicant for a permit or other authorization under Section 382.05183, Section 382.05185(c) or (d), Section 382.05186, or Section 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 382.0365(g)(2) to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, Section 382.05185 (c) or (d), Section 382.05186, or Section 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny an ~~[a voluntary]~~ emissions reduction permit may move for rehearing and is entitled to judicial review under Section 382.032.

SECTION 4: Section 382.05192, Health and Safety Code is amended to read as follows:

SECTION 382.05192. REVIEW AND RENEWAL OF ~~[VOLUNTARY]~~ EMISSION REDUCTION ~~[AND MULTIPLE PLANT]~~ PERMITS. Review and renewal of a permit issued or other authorization granted under Section 382.05183, Section 382.05184, Section 382.05185 (c) or (d), Section 382.05186, or Section 382.0519 or Section 382.05194 shall be conducted in accordance with Section 382.055.

SECTION 5. Amend Subsection (d), Section 382.0621, Health and Safety Code, to read as follows:

(d) Except as provided by this subsection ~~[section]~~, the commission may not impose a fee for any amount of emissions of an air contaminant regulated

under the federal Clean Air Act Amendments of 1990 (Pub.L.No. 101-549) in excess of 4,000 tons per year from any source. The fees under this subsection do not apply to a facility with a permit or a permit application pending under Section 382.05185(c). The fees under this subsection do not apply to a facility for which a letter expressing intent to authorize that facility is filed on or before September 1, 2002 or a permit application is timely filed. In the event that a letter of intent is not filed, or if a letter of intent is filed but a permit application is not subsequently timely filed, the fees due and owing for such facility shall be deemed to have accrued since September 1, 2001 in the amounts set forth in this subsection. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) ~~[treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.]~~ double the amount of the fee imposed for all emissions of 4,000 tons or less each fiscal year; and,

(3) treble the amount of the fee imposed for all emissions in excess of 4,000 tons each fiscal year.

Representative Zbranek moved to table Amendment No. 41.

A record vote was requested.

The motion to table was lost by (Record 154): 45 Yeas, 98 Nays, 2 Present, not voting.

Yeas — Bailey; Burnam; Capelo; Coleman; Danburg; Davis, Y.; Dukes; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Garcia; Giddings; Gray; Green; Gutierrez; Hochberg; Hodge; Jones, J.; Kitchen; Longoria; Luna; Martinez Fischer; Maxey; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Puente; Rangel; Raymond; Salinas; Shields; Solis; Thompson; Turner, S.; Uresti; Villarreal; Yarbrough; Zbranek.

Nays — Allen; Averitt; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Callegari; Carter; Chavez; Chisum; Christian; Clark; Cook; Corte; Counts; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Deshotel; Driver; Dunnam; Elkins; Ellis; Farabee; Flores; Gallego; George; Geren; Glaze; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Junell; Keel; Keffer; King, P.; King, T.; Kolkhorst; Kuempel; Lewis, G.; Lewis, R.; Madden; Marchant; McCall; McReynolds; Merritt; Miller; Morrison; Najera; Nixon; Pickett; Pitts; Ramsay; Reyna, A.; Reyna, E.; Ritter; Seaman; Smith; Smithee; Solomons; Swinford; Talton; Telford; Tillery; Truitt; Turner, B.; Uher; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker; Sadler(C).

Absent, Excused — Wolens.

Absent — Alexander; Hilbert; Krusee; Mowery.

STATEMENT OF VOTE

When Record No. 154 was taken, my vote failed to register. I would have voted no.

Krusee

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

CSHB 2912-(consideration continued)

Amendment No. 42

Representative Gallego offered the following substitute amendment for Amendment No. 41:

Substitute the following for the Amendment by Chisum to the Amendment on page 72 (amendments packet) to **CSHB 2912**:

Amend the Amendment to **CSHB 2912** on page 72 of the amendment packet to **CSHB 2912** by deleting lines 3-29, page 1 and by deleting pages 2-10 and inserting the following:

SECTION 1. Subsections (a) and (b), Section 382.051, Health and Safety Code, are amended to read as follows:

(a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate a [an] facility described by Section 382.0518(g) [under a voluntary emissions reduction permit]; or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519; ~~[or]~~

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

(8) a small business stationary source permit under 382.05184;

(9) an electric generating facility permit under Section 382.05185 and Section 39.264, Utilities Code;

(10) an authorization under Section 382.05186; or

(11) other permits as necessary.

SECTION 2. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05181-Section 382.05186, to read as follows:

Section 382.05181. PERMIT REQUIRED. (a) Any facility described by Section 382.0518(g) that does not have an application pending for a permit or other authorization under this Chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003 if the facility is located in an area designated as nonattainment for a national ambient air quality standard as of September 1, 2001; or

(2) September 1, 2005 if the facility is located in an area other than a nonattainment area as of September 1, 2001.

(b) Any facility described by Section 382.0518(g) that does not have a permit or other authorization under this Chapter, other than a permit required under Section 382.054, may not emit air contaminants on or after:

(1) September 1, 2005 if the facility is located in an area designated as nonattainment for a national ambient air quality standard as of September 1, 2001; or

(2) September 1, 2007 if the facility is located in an area other than a nonattainment area as of September 1, 2001.

(c) Facilities eligible for a permit under Section 382.05184 are not subject to this section.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions which will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

SECTION 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility described by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment the commission finds that the application demonstrates compliance with:

(1) Section 382.003(9)(e)(ii) if the permit application is filed before September 1, 2002; or

(2) Section 382.0518(b) if the permit application is filed:

(A) before September 1, 2003 if the facility is located in an area designated as nonattainment for national ambient air quality standards as of September 1, 2001; and

(B) before September 1, 2005 if the facility is located in an area other than a nonattainment area as of September 1, 2001.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site described by Section 382.0518(g)

and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error. If while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, the commission may request the information and set a reasonable deadline for a response. Failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT.

(a) Facilities described by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 382.0365(h)(2), and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2005.

(b) Facilities described by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit or other authorization under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after September 1, 2007.

(c) The commission shall grant a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

(h) If an applicant omits any relevant facts or submits incorrect

information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error. If while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, the commission may request the information and set a reasonable deadline for a response. Failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under 39.264(d), Utilities Code.

(b) Electric generating facilities, including coal-fired electric generating facilities, that are required to obtain a permit under Section 39.264, Utilities Code, and are not described by Subsection (a):

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulfur dioxide and as provided by commission rules for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) are not considered permitted for criteria pollutants not described by Subdivision (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subdivision (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002 for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code is:

(1) a generator that does not generate electric energy for compensation and is used no more than ten percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy for compensation.

(e) Nitrogen oxide emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission shall not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For purposes of this section, a natural gas-fired electric generating facility is one which is capable of burning natural gas or a fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades which shall require that the amount and grade of fuel oil used to not increase emissions above allowable limits.

Section 382.05186. AUTHORIZATION FOR PIPELINE FACILITIES. (a) The commission by rule shall establish the procedures for applications for existing processing, treating, compression or pumping facilities described by Section 382.0518(g) connected to or part of a gathering or transmission pipeline.

(b) Based on a prioritization by the commission as necessary to meet local, regional and statewide air quality needs related directly or indirectly to federal air quality standards, the commission may require up to a 50 percent reduction of the hourly emission rate, in terms of grams per brake horsepower-hour, of nitrogen oxide and may also require up to a 50 percent reduction of the hourly emission rate, in terms of grams per brake horsepower-hour, of volatile organic compounds from reciprocating internal combustion engines subject to this section. The commission may consider requiring up to a 50 percent reduction of the hourly emission rate of nitrogen oxide and may also consider requiring up to a 50 percent reduction of the hourly emission rate of volatile organic compounds from facilities other than reciprocating internal combustion engines that are connected to or part of a gathering or transmission pipeline. The commission may by rule designate counties or regions of the state where greater reductions of emissions will be required than in other areas, but no more than 50 percent emissions reductions may be required in any area.

(c) The commission shall:

(1) allow for a single permit for all facilities connected to or part of a gas gathering or transmission pipeline;

(2) allow for required reductions for facilities under this section to be achieved at one facility or averaged among more than one facility and located in the same local, regional or statewide areas designated by the commission under subsection (b);

(3) for purposes of emission averaging, allow emission reductions achieved from facilities defined by Section 382.0518(g) since September 1, 1997; and

(4) allow an owner or operator to apply for separate permits under this section for discreet and separate facilities connected to or part of a gathering or transmission pipeline.

(d) Facilities authorized by this section shall be considered permitted under this chapter.

(e) The commission shall issue a permit under this section if the requirements of this section are met.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) If an applicant omits any relevant facts or submits incorrect information in an application, the applicant shall submit the relevant facts or correct the information no later than 60 days after discovering the error. If while processing the application, the commission determines that additional information is necessary to evaluate or to take final action on the application, the commission may request the information and set a reasonable deadline for a response. Failure to comply with the deadline for the response will result in the application being returned to the applicant.

SECTION 3. Amend Section 382.05191, Subchapter C, Health and Safety Code, to read as follows:

SECTION 382.05191. ~~[VOLUNTARY]~~ EMISSIONS REDUCTION PERMITS ~~[PERMIT]~~ NOTICE AND HEARING. (a) An applicant for a permit or other authorization under Section 382.05183, Section 382.05185(c) or (d), Section 382.05186, or Section 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 382.0365(g)(2) to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, Section 382.05185 (c) or (d), Section 382.05186, or Section 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny an ~~[a voluntary]~~ emissions reduction permit may move for rehearing and is entitled to judicial review under Section 382.032.

SECTION 4: Section 382.05192, Health and Safety Code is amended to read as follows:

SECTION 382.05192. REVIEW AND RENEWAL OF ~~[VOLUNTARY]~~ EMISSION REDUCTION ~~[AND MULTIPLE PLANT]~~ PERMITS. Review and renewal of a permit issued or other authorization granted under Section 382.05183, Section 382.05184, Section 382.05185 (c) or (d), Section 382.05186, or Section 382.0519 or Section 382.05194 shall be conducted in accordance with Section 382.055.

SECTION 5. Amend Subsection (d), Section 382.0621, Health and Safety Code, to read as follows:

(d) Except as provided by this subsection ~~[section]~~, the commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L.No. 101-549) in excess of 4,000 tons per year from any source. The fees under this subsection do not apply to a facility with a permit or a permit application pending under Section 382.05185(c). The fees under this subsection do not apply to a facility for which a letter expressing intent to authorize that facility is filed

on or before September 1, 2002 or a permit application is timely filed. In the event that a letter of intent is not filed, or if a letter of intent is filed but a permit application is not subsequently timely filed, the fees due and owing for such facility shall be deemed to have accrued since September 1, 2001 in the amounts set forth in this subsection. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) ~~[treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.]~~ double the amount of the fee imposed for all emissions of 4,000 tons or less each fiscal year; and,

(3) treble the amount of the fee imposed for all emissions in excess of 4,000 tons each fiscal year.

A record vote was requested.

Amendment No. 42 failed of adoption by (Record 155): 47 Yeas, 96 Nays, 2 Present, not voting.

Yeas — Bailey; Burnam; Capelo; Coleman; Danburg; Davis, Y.; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Farabee; Farrar; Gallego; Garcia; Giddings; Glaze; Gray; Gutierrez; Hochberg; Hodge; Jones, J.; Kitchen; Longoria; Luna; Martinez Fischer; Maxey; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Pickett; Puente; Rangel; Reyna, A.; Salinas; Solis; Tillery; Turner, S.; Uresti; Villarreal; Yarbrough; Zbranek.

Nays — Alexander; Allen; Averitt; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Callegari; Carter; Chavez; Chisum; Christian; Clark; Cook; Counts; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Deshotel; Driver; Elkins; Ellis; Flores; George; Geren; Goodman; Goolsby; Green; Grusendorf; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Junell; Keel; Keffer; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Madden; Marchant; McCall; McReynolds; Merritt; Miller; Morrison; Najera; Nixon; Noriega; Pitts; Ramsay; Raymond; Reyna, E.; Ritter; Seaman; Shields; Smith; Smithee; Solomons; Swinford; Talton; Telford; Thompson; Truitt; Turner, B.; Uher; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Woolley.

Present, not voting — Mr. Speaker; Sadler(C).

Absent, Excused — Wolens.

Absent — Corte; Hilbert; Hinojosa; Mowery.

Amendment No. 41 was adopted.

Amendment No. 40, as amended, was adopted without objection.

Amendment No. 43

Representative Puente offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 82

Amend **CSHB 2912** on page 66, between lines 3 and 4, by inserting the following section, numbered appropriately:

SECTION __. (a) Section 382.0621(d), Health and Safety Code, is amended to read as follows:

(d) For the state fiscal years ending August 31, 2003, and August 31, 2004, the fee imposed under this section may not exceed \$20 per ton of each ~~[Except as provided by this section, the commission may not impose a fee for any amount of emissions of an]~~ air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549). For subsequent fiscal years, the commission by rule shall establish the amount of the fee as provided by Subsection (b). The commission may not set a cap on the amount of the fee or the volume of emissions to which the fee applies [in excess of 4,000 tons per year from any source]. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

(b) This section takes effect September 1, 2002.

Representative Allen moved to table Amendment No. 43.

The motion to table prevailed.

Amendment No. 44

Representative Wilson offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 84

Amend **CSHB 2912** on page 66, between lines 3 and 4, by inserting:

SECTION 4.07. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.065 to read as follows:

Sec. 382.065. CERTAIN LOCATIONS FOR CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the location of or operation of a crushing facility for concrete production inside the municipal boundaries of a municipality with a population of greater than 1.5 million that is located in a county any part of which has been designated a nonattainment area for national ambient air quality standards.

(b) Rules adopted under Subsection (a) must provide a transition period of nine months for crushing facilities in operation on the effective date of this section to cease operations and move outside of the municipal boundaries.

Amendment No. 45

Representative Wilson offered the following amendment to Amendment No. 44:

Amend Amendment No. 44 by Wilson to **CSHB 2912** (page 84, proposed amendments packet) as follows:

(1) strike lines 8-11 and substitute:
within three-quarters of one mile of a building used as a single or multi-family residence.

(2) strike line 15 and substitute:
and move outside of the prohibited area.

Amendment No. 45 was withdrawn.

Amendment No. 46

Representatives Wilson, Edwards, Noriega, Crabb, and Denny offered the following amendment to Amendment No. 44:

Amend Amendment No. 44 by Wilson to **CSHB 2912** (page 84, proposed amendments packet) as follows:

(1) strike lines 8-11 and substitute:
within one-half mile of a building used as a single or multi-family residence, school, or place of worship.

(2) strike line 15 and substitute:
and move outside of the prohibited area.

Amendment No. 46 was adopted without objection.

Amendment No. 44, as amended, was adopted without objection.

Amendment No. 47

Representative T. King offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 85

Amend **CSHB 2912** in Article 6 by adding a new Sec. 341.105(c) to read as follows:

(c) A person who holds a license under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statute) is exempt from the requirements of this Article.

Amendment No. 47 was adopted without objection.

Amendment No. 48

Representative Howard offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 86

Amend **CSHB 2912** on page 73, lines 14 and 15, by striking "as specified by commission rule.".

Amendment No. 48 was adopted without objection.

Amendment No. 49

Representatives Uher and Bonnen offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 87

Amend **CSHB 2912** on page 73, between lines 16 and 17, by adding the following section, appropriately numbered:

SECTION __. (a) Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1012 to read as follows:

Sec 361.1012. PROHIBITION ON PERMIT FOR MUNICIPAL SOLID WASTE FACILITY NEAR WATER CONVEYANCE SYSTEM. The commission may not issue a permit under this chapter to a municipal solid waste facility in which putrescible solid waste, construction-demolition waste, brush, tires, or rubbish is disposed of that is located within 2,500 feet of a freshwater reservoir, canal, or other surface water conveyance system that reasonably may be used to transport fresh water for agricultural, domestic, or drinking purposes.

(b) Section 361.1012, Health and Safety Code, as added by this section applies only to a municipal solid waste facility permit application that is pending before the commission on the effective date of this section or that is submitted to the commission on or after the effective date of this section.

(c) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2001.

Amendment No. 50

Representative Bonnen offered the following amendment to Amendment No. 49:

Amend Amendment No. 49 by Uher and Bonnen to **CSHB 2912** (page 87, proposed amendments packet), on line 12, after the period, by adding the following:

This section applies only to an application for a permit for a municipal solid waste facility that is located in a county that has a population of more than 225,000, in which each municipality has a population of less than 40,000, and that is located on the Gulf of Mexico.

Amendment No. 50 was adopted without objection.

Representative Bosse moved to table Amendment No. 49.

The motion to table prevailed.

Amendment No. 51

Representative Goodman offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 88

Amend **CSHB 2912** on page 73, between lines 16 and 17, by adding a new ARTICLE 9 to the bill to read as follows and appropriately renumbering subsequent articles and sections of the bill:

ARTICLE 9. REGULATION OF AIR POLLUTION

SECTION 9.01. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.059 to read as follows:

Sec. 382.059. RESTRICTIONS ON WET-PROCESS CONCRETE PLANTS IN CERTAIN COUNTIES. (a) In this section, "nonattainment area" means an area so designated within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(b) The commission by rule shall require that, beginning December 31, 2003, a wet-process concrete plant located in a county that is in a

nonattainment area designated before December 31, 2000, or in a county adjacent to such a county, must:

(1) meet best available control technology emissions standards for dry-process concrete plants; or

(2) cease operations.

Representative Chisum moved to table Amendment No. 51.

The motion to table prevailed.

Amendment No. 52

Representative Bosse offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 90

Amend **CSHB 2912** as follows:

(1) On page 73, between lines 16 and 17, add a new article and section, numbered appropriately, to read as follows:

ARTICLE ____. **MATTERS RELATED TO REMEDIATION**

Sec. _____. Subchapter F, Chapter 361, Health and Safety Code, is amended by adding Section 361.1875 to read as follows:

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter appear to originate from an upgradient, off-site source that is not owned or operated by the person;

(2) additional corrective action is not required at the site owned or operated by the person; and

(3) the commission will not undertake a formal enforcement action in the matter.

(2) Renumber the subsequent articles and sections of the bill accordingly.

Amendment No. 52 was adopted without objection.

Amendment No. 53

Representatives Dunnam and Averitt offered the following amendment to **CSHB 2912**:

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Amend **CSHB 2912** as follows:

(1) On page 73, between lines 16 and 17, insert the following article and sections, numbered appropriately:

ARTICLE ____. **REGULATION OF CERTAIN
ANIMAL FEEDING OPERATIONS**

SECTION ____. Section 26.001, Water Code, is amended by amending Subdivisions (10) and (13) and adding Subdivisions (27)-(29) to read as follows:

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes tail water or runoff water from irrigation or rainwater runoff from an animal feeding operation or concentrated animal feeding operation that is located in a major feeding operations impaired watershed; and

(B) ["~~agricultural waste~~"] does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes tail water or runoff water from irrigation or rainwater runoff from an animal feeding operation or concentrated animal feeding operation that is located in a major feeding operations impaired watershed; and

(B) ["~~pollutant~~"] does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(27) "Animal feeding operation" means an area of land where animals have been, are, or will be stabled or confined and fed or maintained for 45 days or more in any 12-month period and the confinement areas of which do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. The term:

(A) includes two or more such areas under common ownership that adjoin or use a common area or system for the disposal or beneficial use of wastes; and

(B) does not include a facility for aquatic animal production.

(28) "Major feeding operations impaired watershed" means a watershed containing:

(A) a reservoir used by a municipality for its drinking water source:

(i) that serves a population of more than 150,000 residing inside and outside of the municipality; and

(ii) for which at least half of the water flowing into the reservoir is from a source that is listed, on September 1, 2001, on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d); or

(B) a body of water that the executive director has determined to be impaired by the presence of elevated nutrients caused to any degree by:

(i) the discharge of agricultural waste from an animal feeding operation or concentrated animal feeding operation; or

(ii) discharge or runoff of pollution from land application of agricultural waste from an animal feeding operation or concentrated animal feeding operation.

(29) "Concentrated animal feeding operation" means an animal feeding operation designated as a concentrated animal feeding operation by commission rule or by the executive director under commission rules because of the operation's design, the manner of activities conducted at the operation, or the number of animals confined at the operation.

SECTION _____. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.0287 to read as follows:

Sec. 26.0287. REGULATION OF CERTAIN ANIMAL FEEDING OPERATIONS IN IMPAIRED WATERSHEDS. (a) In this section, "new concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property that does not have a concentrated animal feeding operation on it.

(b) The commission may authorize by rule or by a general permit the construction or operation of a new concentrated animal feeding operation or an increase in the number of animals confined under an existing individual authorization or registration. The rule or general permit may not apply statewide unless the rule or permit applies uniformly the requirements of Subsection (c).

(c) A rule or general permit under Subsection (b) that applies to an existing or new concentrated animal feeding operation that is located or proposed to be located in a major feeding operations impaired watershed or for which the waste application area serving the operation is located or proposed to be located in a major feeding operations impaired watershed must:

(1) require that 100 percent of all the manure produced by all the animals in confinement at the operation, or another proportion of collectible manure provided by commission rule, be removed from the facility; and

(2) prohibit the discharge of agricultural wastes of the operation to or adjacent to water in this state.

(d) Rules concerning the removal of manure adopted under Subsection (c)(1) may provide for different proportions of manure to be removed for different species of confined animals.

(e) This section does not limit the commission's authority to:

(1) prescribe water quality control practices for animal feeding operations by rule, general permit, or individual permit; or

(2) include provisions in a rule, general permit, or individual permit as necessary to protect water resources in this state.

(f) The commission may not issue a general permit to authorize the discharge of agricultural waste into or adjacent to waters in the state from a animal feeding operation if such waters are within a major feeding operations impaired watershed.

SECTION _____. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.0425 to read as follows:

Sec. 26.0425. SOIL TESTING IN CERTAIN IMPAIRED WATERSHEDS. (a) In this section, "waste application field" means an area of land on which

agricultural waste from an animal feeding operation or concentrated animal feeding operation has been applied for beneficial use.

(b) The commission shall collect one or more representative soil samples from each waste application field serving an animal feeding operation or concentrated animal feeding operation that is located in a major feeding operations impaired watershed.

(c) The commission shall:

(1) test each sample for phosphorus and any other constituent designated by commission rule; and

(2) provide the test results to the operator of the operation.

(d) The commission and employees or agents of the commission may enter public or private property at any reasonable time for activities reasonably related to the purposes of this section. The commission may enforce this right as provided by Section 7.032, 7.051, 7.052, or 7.105.

(e) The commission by rule shall implement this section. The rules must provide for the scheduling and manner of the required testing.

(2) Renumber subsequent articles and sections of the bill appropriately.

Amendment No. 54

Representatives Dunnam and Averitt offered the following amendment to Amendment No. 53:

Amend Amendment No. 53 by Dunnam/Averitt to **CSHB 2912** (pages 93-97, proposed amendments packet) as follows:

(1) On page 93 of the packet strike lines 7 and 8 and substitute: amending Subdivisions (10) and (13) to read as follows:

(2) On page 93 of the packet, strike line 18 and substitute: sole source impairment zone, as defined by Section 26.502; and

(3) On page 94 of the packet, strike line 8 and substitute: sole source impairment zone, as defined by Section 26.502; and

(4) Strike all of the amendment below page 94, line 11 of the packet, and substitute:

SECTION _____. Chapter 26, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. In this subchapter:

(1) "Concentrated animal feeding operation" has the meaning assigned by 30 T.A.C. Section 321.132 on the effective date of this subchapter.

(2) "New concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property not previously authorized by the state to be operated as a concentrated animal feeding operation.

(3) "Historical waste application field" means an area of land that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation on which agricultural waste from a concentrated animal feeding operation has been applied.

Sec. 26.502. APPLICABILITY. This subchapter applies only in a major sole source impairment zone. In this subchapter, "major sole source impairment zone" means a watershed that contains a reservoir;

(1) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(2) at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended;

(A) at least in part because of concerns regarding pathogens and phosphorus; and

(B) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) The commission may authorize the construction or operation of a new concentrated animal feeding operation, or an increase in the animals confined under an existing operation only by a new or amended individual permit.

(b) The individual permit issued or amended under Subsection (a) must:

(1) provide for management and disposal of waste in accordance with Subchapter B, Chapter 321, Title 30, Texas Administrative Code;

(2) require that 100 percent of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) disposed of or used outside of the watershed;

(B) delivered to a composting facility approved by the executive director;

(C) applied to a waste application field that is not an historical waste application field or owned or operated by an owner or operator of a concentrated animal feeding operation;

(D) put to another beneficial use approved by the executive director; or

(E) applied to an historical waste application field that is owned or operated by the owner or operator of the concentrated animal feeding operation only if:

(i) results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer parts per million of extractable phosphorus (reported as P); or

(ii) the manure is applied, with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:

(a) an employee of the United States Department of Agriculture's Natural Resources Conservation Service;

(b) a nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;

(c) the State Soil and Water Conservation Board;

(d) the Texas Agricultural Extension Service;

(e) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(f) a professional agronomist or soil scientist certified by the American Society of Agronomy.

(c) The commission may approve a detailed nutrient utilization plan approved by the commission that is developed by a professional agronomist or soil scientist certified by the American Society of Agronomy only if the commission finds that another person listed by Subsection (b)(2)(E)(ii) cannot develop a plan in a timely manner.

(d) The commission may not issue a general permit to authorize the discharge of agricultural waste into or adjacent to waters in this state from an animal feeding operation if such waters are within a major sole source impairment zone.

(e) The commission and employees or agents of the commission may enter public or private property at any reasonable time for activities related to the purposes of this subchapter. The commission may enforce this authority as provided by Section 7.032, 7.051, 7.052, or 7.105.

(f) This section does not limit the commission's authority to include in an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) The operator of a concentrated animal feeding operation shall contract with a person described by Section 26.503(b)(2)(E)(ii) selected by the executive director to collect one or more representative composite soil samples from each waste application field. The operator shall have sampling performed under this subsection not less often than once every 12 months.

(b) Each sample collected under this section must be tested for phosphorus and any other nutrient designated by the executive director. The test results must be made available to the executive director and the operator of the concentrated animal feeding operation. The test results are public records of the commission.

(c) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(d) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but not more than 500 parts per million, the operator shall file with the commission:

(1) a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii); or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(e) The owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at

the discretion of the executive director. The executive director, in determining whether to take an enforcement action under this subsection, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

(f) The commission shall adopt rules to implement this section. The rules must provide for the scheduling and manner of the required soil testing and the form, content, and deadlines for plans required under this section.

Sec. 26.505. ENFORCEMENT DISCRETION. The commission does not have prosecutorial discretion in enforcing this subchapter and shall strictly enforce the provisions of this subchapter.

Amendment No. 55

Representative Cook offered the following substitute amendment for Amendment No. 54:

Substitute the following for the Dunnam/Averitt amendment to the Dunnam/Averitt amendment:

Amend the Dunnam/Averitt Amendment (page 93 of the amendment packet) to **CSHB 2912** by striking everything after line 3 and substituting the following:

ARTICLE ____ PROTECTION OF CERTAIN WATERSHEDS

SECTION _____ Chapter 26, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. In this subchapter:

(1) "Concentrated animal feeding operation" has the meaning assigned by 30 Tex. Admin. Code Section 321.32 on the effective date of this subchapter.

(2) "New concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property not previously authorized by the state to be operated as a concentrated animal feeding operation.

(3) "Waste application field" means an area of land owned or controlled by an operator of a concentrated animal feeding operation on which agricultural waste from a concentrated animal feeding operation has been applied.

Sec. 26.502. APPLICABILITY. This subchapter applies only in a watershed that contains a reservoir:

(1) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(2) at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended:

(A) at least in part because of concerns regarding pathogens and phosphorus; and

(B) for which the commission has prepared and submitted a total maximum daily load standard.

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) The commission may authorize the construction or operation of a new concentrated animal feeding operation, or an increase in the animals confined under an existing operation, with a waste application field only by:

(1) a new or amended individual permit; or

(2) a general permit specific to the watershed where the operation or application field owned or controlled by the owner or operator of the operation is or is proposed to be located.

(b) The individual or general permit issued or amended under Subsection (a) must:

(1) provide for management and disposal of waste in accordance with Subchapter B, Chapter 321, Title 30, Texas Administrative Code; and

(2) require that 100 percent of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

(A) disposed of or used outside of the watershed;

(B) delivered to a composting facility approved by the executive director;

(C) applied to a waste application field that is not owned or operated by an owner or operator of a concentrated animal feeding operation;

(D) put to another beneficial use approved by the executive director; or

(E) be applied to a waste application field that is owned or operated by the owner or operator of the concentrated animal feeding operation only if:

(i) results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer parts per million of extractable phosphorus (reported as P); or

(ii) the manure is applied, with commission approval, in accordance with a detailed nutrient utilization plan developed by:

(a) an employee of the United States Department of Agriculture's Natural Resources Conservation Service;

(b) a nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;

(c) the State Soil and Water Conservation Board;

(d) the Texas Agricultural Extension Service;

(e) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(f) a professional agronomist or soil scientist certified by the American Society of Agronomy.

(c) This section does not limit the commission's authority to include in

an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) The operator of a concentrated animal feeding operation shall contract with a person described by Section 26.503(b)(2)(E) to collect one or more representative composite soil samples from each waste application field. The operator shall have sampling performed under this subsection not less often than once every 12 months.

(b) Each sample collected under this section must be tested for phosphorus and any other nutrient designated by the executive director. The test results must be made available to the executive director and the operator of the concentrated animal feeding operation. The test results are public records of the commission.

(c) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E).

(d) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but 500 or less parts per million, the operator shall file with the commission:

(1) a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E); or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person listed by Section 26.503(b)(2)(E).

(e) The owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at the discretion of the executive director. The executive director, in determining whether to take an enforcement action under this subsection, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

(f) The commission shall adopt rules to implement this section. The rules must provide for the scheduling and manner of the required soil testing and the form, content, and deadlines for plans required under this section.

Sec. 26.505. PHOSPHORUS CLEANING PRODUCTS. A state or local governmental entity located in the watershed may not use a detergent or other cleaning product that contains phosphorus after the expiration of six months after the effective date of this subchapter.

ARTICLE ____ NORTH BOSQUE RIVER WATERSHED COUNCIL
SECTION ____ DEFINITIONS. In this Act:

(1) "Council" means the North Bosque River Watershed Council.

(2) "Watershed" means the watershed to which Subchapter L,

Chapter 26, Water Code, as added by Article ____ of this Act, applies.

SECTION ____ PURPOSE; COMPLIANCE WITH LEGAL REQUIREMENTS. (a) The council is an advisory committee to the commission and may make recommendations to the commission regarding a comprehensive watershed protection plan to reduce pollutants reaching waterways in the watershed.

(b) This article and the activities of the council do not affect the obligation of any person to comply with any state or federal law, rule, or regulation.

SECTION ____ CREATION AND COMPOSITION OF COUNCIL. (a) The North Bosque River Watershed Council is created.

(b) The council is composed of the nonvoting members listed by Subsection (c) of this section and the following voting members:

(1) a dairy producer appointed by the Dairy Farmers of America;

(2) a dairy producer appointed by the Texas Association of Dairymen;

(3) a representative of the environmental community appointed by the chairman of the Texas Natural Resource Conservation Commission;

(4) the general manager of the Texas Rural Water Association;

(5) the president of the Brazos River Authority or a member of the board of directors of the authority appointed by the president;

(6) the commissioner of agriculture or a person appointed by the commissioner of agriculture;

(7) a representative of the general agriculture industry appointed by the chancellor of The Texas A&M University System;

(8) a representative of the City of Waco appointed by the mayor of the City of Waco; and

(9) a representative of a municipality in the watershed other than the City of Waco appointed by the Texas Municipal League.

(c) The nonvoting members of the council are:

(1) the mayor of the City of Temple or a member of the city council of that municipality designated by the mayor;

(2) the mayor of the City of Comanche or a member of the city council of that municipality designated by the mayor;

(3) a representative of Fort Hood appointed by the commander of the fort;

(4) a representative of the Texas and Southwestern Cattle Raisers Association, appointed by the president of the association; and

(5) a representative of the Texas Farm Bureau selected by the governing body of the Texas Farm Bureau.

SECTION ____ ORGANIZATION AND ADMINISTRATION OF COUNCIL. (a) The council shall meet at least once each calendar quarter and as necessary to fulfill its charges under Section ____ of this Act.

(b) The commissioner of agriculture or the member of the council appointed by the commissioner shall call the initial meeting of the council and act as the presiding officer of the council for the initial meeting.

(c) The council shall select a presiding officer and may select other officers as it considers advisable.

(d) An action of the council requires a vote of two-thirds of the voting members listed in Section _____ of this Act.

(e) The council may appoint subcommittees to make recommendations to the full council. The council may provide a subcommittee with nonvoting advisory members.

(f) A council member may not delegate a duty under this article to another person but may use another person for technical assistance.

(g) The council may hire or contract with a facilitator or mediator to assist the council in its functions. The role and responsibility of the facilitator or mediator are established by the council.

SECTION _____ PUBLIC COMMENT. At each meeting of the council, the council shall provide for not less than 30 minutes for an opportunity for public comments on matters related to the council's charges under Section _____ of this Act.

SECTION _____ CHARGES. (a) The council shall:

(1) review and comment on rules or regulations that may affect the watershed proposed by:

(A) the Texas Natural Resource Conservation Commission;
or

(B) the United States Environmental Protection Agency;

(2) review and comment on an education and certification program for the implementation of best management practices to ensure minimal contaminated runoff to waters of the state in the watershed;

(3) review and evaluate a means to address any contaminated runoff from waste application fields that are:

(A) owned by a municipality or other person who is not subject to Subchapter B, Chapter 321, Title 30, Texas Administrative Code; and

(B) located in the watershed;

(4) review and evaluate alternative treatment options for dairy operation wastes in the watershed including:

(A) composting; and

(B) methods to reduce phosphorus content of liquid wastes or lagoon wastes;

(5) recommend a site inspection program to verify that facilities constructed in the watershed to comply with a permit under Chapter 26, Water Code, conform to the approved design and specifications;

(6) review and recommend means to achieve phosphorus content reductions at wastewater treatment plants in the watershed to a concentration of between one and two milligrams per liter;

(7) provide recommendations for phosphorus reduction programs for municipalities in the watershed with the objective of reducing or eliminating the:

(A) use of phosphate-based detergents and other phosphate-based cleaning supplies; and

(B) excessive application of fertilizers on lawns, golf courses, and other areas;

(8) coordinate with the Texas Natural Resource Conservation

Commission, the State Soil and Water Conservation Board, the United States Department of Agriculture's Natural Resources Conservation Service, and the Texas Agricultural Extension Service in efforts to extend increased technical assistance and training to agricultural and municipal waste management personnel in the watershed;

(9) review and recommend water quality monitoring efforts to assess the pollutant loading and effects of activities in the watershed, including:

(A) studies at the edge of fields to assess the direct runoff from waste application field stormwater and the nutrient contributions from the watershed;

(B) in-stream monitoring at locations adjacent to waste application fields that may receive runoff from the fields; and

(C) assessment of other significant point sources or nonpoint sources of pollution to the waters of the watershed, including urban runoff and septic contributions;

(10) review and evaluate the process of the State Soil and Water Conservation Board for developing water quality management plans;

(11) consider and recommend other water quality initiatives or studies to examine the effects on the watershed of potential pollutants;

(12) review the effectiveness of composting efforts and recommend means to increase the efficiency of composting efforts or to increase the amount of waste composted;

(13) review and recommend methods for sampling and testing soil phosphorus concentrations, including sampling and testing required by Subchapter L, Chapter 26, Water Code, as added by Article ____ of this Act;

(14) review available funding of and recommend avenues for additional funding of alternative means to reduce or mitigate point source and nonpoint source pollution; and

(15) review the economic effects of all current and proposed rules of the Texas Natural Resource Conservation Commission that affect the watershed.

(b) In undertaking its charges under this section, the council shall seek the technical assistance of knowledgeable persons, including a representative of:

(1) the Texas Natural Resource Conservation Commission;

(2) the Texas Department of Agriculture;

(3) the Texas Water Development Board;

(4) the State Soil and Water Conservation Board;

(5) the United States Environmental Protection Agency;

(6) the Brazos River Authority;

(7) the Texas Institute for Applied Environmental Research at Tarleton State University;

(8) the Texas Agricultural Extension Service;

(9) the United States Department of Agriculture, including its Natural Resources Conservation Service;

(10) an appropriate unit of:

(A) Baylor University;

(B) Texas Tech University;

(C) The Texas A&M University System; or

(D) The University of Texas System; or

(11) the United States Army Corps of Engineers.

SECTION _____ FUNDING OF COUNCIL ACTIVITIES. (a) A state agency included in the list of entities in Section _____ of this Act may use money appropriated to it for a function related to water quality for an activity of the council.

(b) The council may solicit and accept gifts or grants from any person for the use of the council in fulfilling its charges under Section _____ of this Act or administrative expenses of the council.

(c) A voting or nonvoting member of the council is not entitled to compensation for service on the council or to reimbursement for travel expenses. A voting or nonvoting member of the council who represents a city, university, or state agency may receive reimbursement for travel expenses to which the member is otherwise entitled.

SECTION _____ REPORT. The council shall prepare a report of its activities, conclusions, and recommendations prepared with the assistance of the Texas Natural Resource Conservation Commission. Not later than December 1, 2002, the council shall provide the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each committee of the senate and the house of representatives that has jurisdiction over environmental or agricultural matters.

SECTION _____ EXPIRATION OF ARTICLE; ABOLITION OF COUNCIL. The council is abolished and this article expires on the final day of the 78th regular legislative session.

ARTICLE _____ TRANSITION; EFFECTIVE DATE

SECTION _____ INITIAL TESTING OF SOIL UNDER SUBCHAPTER L, CHAPTER 26, WATER CODE. (a) Not later than the 180th day after the effective date of this Act, the owner or operator of a waste application field shall have the initial samples collected and tested for phosphorus content under Section 26.504(a), Water Code, as added by Article ____ of this Act. For purposes of this section, the owner or operator may use the results of tests of samples of soil taken not less than 12 months before the effective date of this Act if the samples and tests meet the requirements of Section 26.504, Water Code, as added by Article ____ of this Act.

(b) For a waste application field that shows a phosphorus level in the soil of more than 500 parts per million, the plan required by Section 26.504, Water Code, as added by Article ____ of this Act, must be filed or under contract for development not later than the 90th day after the date the operator receives the soil testing results.

(c) For a waste application field that shows a phosphorus level in the soil of more than 200, but not more than 500, parts per million, the plan or the documentation showing the level is supported by a plan, as required by Section 26.504, Water Code, as added by Article ____ of this Act, must be filed or under contract for development not later than the 180th day after the date the operator receives the soil testing results.

(Speaker in the chair)

Representative Dunnam moved to table Amendment No. 55.

The motion to table prevailed.

Amendment No. 54 was adopted without objection.

Amendment No. 53, as amended, was adopted.

Amendment No. 56

Representative Junell offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 98

Amend **CSHB 2912** on page 73, between lines 16 and 17, by inserting the following article, with the article and sections appropriately numbered, and renumbering the subsequent articles and sections accordingly:

ARTICLE __. REGULATION AND REMEDIATION OF UNDERGROUND AND ABOVEGROUND STORAGE TANKS

SECTION __. Section 26.342, Water Code, is amended by amending Subdivisions (9)-(17) and adding Subdivision (18) to read as follows:

(9) "Owner" means a person who holds legal possession or ownership of an interest in an underground storage tank system or an aboveground storage tank. If the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person. A person that has registered as an owner of an underground storage tank system or aboveground storage tank with the commission under Section 26.346 after September 1, 1987, shall be considered the tank system owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the tank system was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Water Code Section 26.3514 (Limits on Liability of Lender), Section 26.3515 (Limits on Liability of Corporate Fiduciary), and Section 26.3516 (Limits on Liability of Taxing Unit).

(10) "Person" means an individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(11) ~~[(10)]~~ "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(12) ~~[(11)]~~ "Petroleum storage tank" means:

(A) any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

(13) [(+2)] "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment.

(14) [(+3)] "Release" means any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground or aboveground storage tank into groundwater, surface water, or subsurface soils.

(15) [(+4)] "Risk-based corrective action" means site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

(16) [(+5)] "Spent oil" means a regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(17) [(+6)] "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(18) [(+7)] "Vehicle service and fueling facility" means a facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

SECTION __. Sections 26.346(a) and (c), Water Code, are amended to read as follows:

(a) An underground or aboveground storage tank must be registered with the commission unless the tank is exempt from regulation under Section 26.344 of this code or the tank is covered under Subsection (b) of this section. The commission by rule shall establish the procedures and requirements for establishing and maintaining current registration information concerning underground and aboveground storage tanks. The commission shall also require that an owner or operator of an underground storage tank used for storing motor fuels (as defined in commission rule) complete an annual underground storage tank compliance certification form.

(c) The commission shall issue to each person who owns or operates a petroleum storage tank that is registered under this section a registration and compliance confirmation certificate that includes a brief description of:

(1) the responsibility of the owner or operator under Section 26.3512 of this code;

(2) the rights of the owner or operator to participate in the petroleum storage tank remediation account and the groundwater protection cleanup program established under this subchapter; and

(3) the responsibility of the owner or operator of an underground storage tank to accurately complete the part of the registration form pertaining to the certification of compliance with underground storage tank administrative requirements and technical standards if the tank is used for storing motor fuels (as defined in commission rule).

SECTION __. Section 26.351, Water Code, is amended by adding Subsections (f), (g), and (h) to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete Corrective Action Plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a Corrective Action Plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a Corrective Action Plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a Corrective Action Plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a Corrective Action Plan or groundwater monitoring, all deadlines set by the executive director concerning the Corrective Action Plan or approved groundwater monitoring plan shall be met; and

(6) site closure requests for all sites where the executive director agreed in writing that no Corrective Action Plan was required must be received by the agency no later than September 1, 2005. The request must be complete, as judged by the executive director.

(g) For persons regulated under Subsection (f), their failure to comply with any deadline listed in Subsection (f) is a violation of this section and the executive director may enforce such a violation under Chapter 7 of this Code. A missed deadline that is the fault of the person, his agent, or contractor shall also eliminate reimbursement eligibility as described at Section 26.3571(b). If it can be established to the executive director's satisfaction that the deadline was not missed at the fault of the person, his agent, or contractor, then reimbursement eligibility is not affected under this subsection.

(h) A person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person may be eligible for under Section 26.3571.

SECTION __. Section 26.3512(b), Water Code, is amended to read as follows:

(b) Funds from the petroleum storage tank remediation account may not be used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of, the following:

(1) the owner or operator contribution described by Subsections (e)-(k);

(2) any expenses for corrective action that exceed the applicable amount specified by Section 26.3573(m);

(3) any expenses for corrective action that are not covered by payment from the petroleum storage tank remediation account under the rules or decisions of the commission under this subchapter;

(4) any expenses for corrective action not ordered or agreed to by the commission; ~~or~~

(5) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998; and

(6) any corrective action expenses for which reimbursement is prohibited under Sections 26.3571, 26.3573, or 26.361.

SECTION __. Section 26.355(d), Water Code, is amended to read as follows:

(d) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement and if the costs are recovered under this section, the commission may not recover more than the amount of the applicable owner or operator contribution described by Section 26.3512~~(e)~~ of this code from an eligible owner or operator for corrective action for each occurrence. However, this limitation is not applicable to cost recovery actions initiated by the executive director at sites where the executive director has determined that the owner or operator is in violation of Section 26.351(f).

SECTION __. Section 26.3571, Water Code, is amended by amending Subsection (b) and adding Subsections (g) and (h) to read as follows:

(b) To be an eligible owner or operator for purposes of this subchapter, a person must not have missed any of the deadlines described in Section 26.351(f) and must:

(1) be one of the following:

(A) an owner or operator of a petroleum storage tank that is subject to regulation under this subchapter;

(B) an owner of land that can clearly prove that the land has been contaminated by a release of petroleum products from a petroleum storage tank that is subject to regulation under this subchapter, whether or not the tank is still attached to that land; or

(C) a lender that has a bona fide security or lienhold interest in or mortgage lien on any property contaminated by the release of

petroleum products from a petroleum storage tank subject to regulation under this subchapter, or that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of such property;

(2) be in compliance with this subchapter as determined by the commission; and

(3) meet qualifying criteria established by the commission under Subsection (a) of this section.

(g) An otherwise eligible owner or operator who misses a deadline referenced in Subsection (b) shall be considered ineligible for reimbursement under this subchapter.

(h) Nothing in this section reduces the liability to perform corrective action created under Section 26.351 and other parts of this subchapter.

SECTION __. Section 26.3572(b), Water Code, is amended to read as follows:

(b) In administering the program, the commission shall:

(1) negotiate with or direct responsible parties in site assessment and remediation matters using risk-based corrective action;

(2) approve site-specific corrective action plans for each site as necessary, using risk-based corrective action;

(3) review and inspect site assessment and remedial activities and reports;

(4) use risk-based corrective action procedures as determined by commission rule to establish cleanup levels;

(5) adopt by rule criteria for assigning a priority to each site using risk-based corrective action and assign a priority to each site according to those criteria;

(6) adopt by rule criteria for:

(A) risk-based corrective action site closures; and

(B) the issuance of a closure letter to the owner or operator of a tank site on completion of the commission's corrective action requirements; and

(7) process claims for petroleum storage tank remediation account disbursement in accordance with this subchapter.

SECTION __. Section 26.3573, Water Code, is amended by amending Subsection (d) and by adding Subsections (r) and (s) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program, not to exceed an amount equal to: 11.8 [6.7] percent of the gross receipts of that account for FY 02/03; 16.40 percent of the gross receipts of that account for FY 04/05; and 21.1 percent of the gross receipts of that account for FY 06/07;

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) of this section, expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2006.

SECTION __. Sections 26.3574(b), (x), (y), (z), and (aa), Water Code, are amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) \$12.50 [~~\$18.75~~] for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 02 and FY 03; \$10.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 04 and FY 05; \$5.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 06; and \$2.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 07;

(2) \$25.00 [~~\$37.50~~] for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 02 and FY 03; \$20.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 04 and FY 05; \$10.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 06; and \$4.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 07;

(3) \$37.50 [~~\$56.25~~] for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 02 and FY 03; \$30.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 04 and FY 05; \$15.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 06; and \$6.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 07;

(4) \$50.00 [~~\$75~~] for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 02 and FY 03; \$40.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 04 and FY 05; \$20.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 06; and \$8.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 07; and

(5) a \$25.00 [~~\$37.50~~] fee for each increment of 5,000 gallons or any

part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 02 and FY 03; \$20.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 04 and FY 05; \$10.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 06; and \$4.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 07.

~~(x) [After the deposits have been made to the credit of the general revenue fund under Section 403.092(c)(1), Government Code, as added by Chapter 533, Acts of the 73rd Legislature, 1993, the fee imposed under this section may not be collected or required to be paid on or after the first day of the second month following notification by the commission of the date on which the unobligated balance in the petroleum storage tank remediation account equals or exceeds \$100 million. The commission shall notify the comptroller in writing of the date on which the unobligated balance equals or exceeds \$100 million.~~

~~[(y) If the unobligated balance in the petroleum storage tank remediation account falls below \$25 million, the fee shall be reinstated, effective on the first day of the second month following notification by the commission, in amounts determined as follows:~~

~~[(1) \$9.38 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;~~

~~[(2) \$18.75 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;~~

~~[(3) \$28.13 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;~~

~~[(4) \$37.50 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and~~

~~[(5) an \$18.75 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.~~

~~[(z) For purposes of Subsections (x) and (y) of this section, the unobligated balance in the petroleum storage tank remediation account shall be determined by subtracting from the cash balance of the account at the end of each month the sum of the total balances remaining on all contracts entered by the commission or an eligible owner for corrective action plus the total estimates made by the commission of allowable costs for corrective action that are unpaid relating to all commission orders issued before that date to enforce this subchapter.~~

~~[(aa)] The commission shall report to the Legislative Budget Board at the end of each fiscal quarter on the financial status of the petroleum storage tank remediation account.~~

SECTION __. Sections 26.359 and 26.361, Water Code, are amended to read as follows:

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. (a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other

political subdivision created under the constitution or a statute of this state.

(b) ~~A [This subchapter establishes a unified statewide program for underground and surface water protection, and any local] regulation or ordinance adopted by a local government that imposes standards [is effective only to the extent the regulation or ordinance does not conflict with the standards adopted] for the design, construction, installation, or operation of underground storage tanks is not valid [under this subchapter].~~

(c) This section does not apply to a regulation or ordinance in effect as of January 1, 2001.

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. ~~(a)~~ Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2006 ~~[2003]~~. On or after September 1, 2006 ~~[2003]~~, the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

~~[(b) On or after March 1, 2002, the commission may not collect a fee under Section 26.3574 of this code.]~~

Amendment No. 56 was adopted without objection.

Amendment No. 57

Representatives Shields and Kuempel offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 115

Amend **CSHB 2912** as follows:

(1) On page 73, between lines 16 and 17, insert the following article, with the article and the section in the article appropriately numbered:

ARTICLE __. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS

SECTION __. Subchapter I, Chapter 26, Water Code, is amended by adding Section 26.3476 to read as follows:

Sec. 26.3476. SECONDARY CONTAINMENT REQUIRED FOR TANKS LOCATED OVER CERTAIN AQUIFERS. (a) In this section, "secondary containment" means a method by which a secondary wall or barrier is installed around an underground storage tank system in a manner designed to prevent a release of a regulated substance from migrating beyond the secondary wall or barrier before the release can be detected. A secondary containment system may include an impervious liner or vault surrounding a primary tank or piping system or a double-wall tank or piping system.

(b) An underground storage tank system, at a minimum, shall incorporate a method for secondary containment if the system is located in:

(1) the outcrop of a major aquifer composed of limestone and associated carbonate rocks of Cretaceous age or older; and

(2) a county that:

(A) has a population of at least one million and relies on groundwater for at least 75 percent of the county's water supply; or

(B) has a population of at least 75,000 and is adjacent to a county described by Paragraph (A).

(c) Section 26.3475(e) applies to an underground storage tank system that is subject to this section as if a violation of this section were a violation of Section 26.3475.

(d) This section does not prohibit the commission or a political subdivision from adopting additional or more stringent requirements regarding methods for containment of underground storage tank systems if those requirements are compatible with the requirements of this section.

(2) On page 114, between lines 17 and 18, insert the following section, appropriately numbered:

SECTION __. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS. The change in law made by Section 26.3476, Water Code, as added by this Act, applies only to an underground storage tank system that is installed, upgraded, or replaced on or after the effective date of this Act.

(3) Renumber the articles and sections of the committee substitute accordingly.

Representative Bosse moved to table Amendment No. 57.

The motion to table was lost.

Amendment No. 57 was adopted without objection.

Amendment No. 58

Representative Puente offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 117

Amend **CSHB 2912** by creating a new Article 9 and renumbering Article 9 and 10 according. The new Article 9 shall read as follows:

Article 9. Edwards Aquifer

Section 9.01. As used in this Article, Edwards Aquifer has the meaning defined in Section 26.046, Water Code.

Section 9.02. Amend Chapter 26, Subchapter B by adding a new section 26.050 to read as follows:

Section 26.050. The Commission shall make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines.

Amendment No. 59

Representative Puente offered the following amendment to Amendment No. 58:

Amend the Puente amendment to **CSHB 2912** (page 117 of packet) to read as follows:

Amend **CSHB 2912** by creating a new Article 9 and renumbering Article 9 and 10 according. The new Article 9 shall read as follows:

Article 9. Edwards Aquifer

Section 9.01. As used in this Article, Edwards Aquifer has the meaning defined in Section 26.046, Water Code.

Section 9.02. Amend Chapter 26, Subchapter B by adding a new section 26.050 to read as follows:

Section 26.050. The Commission shall make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines, when they become available.

Amendment No. 59 was adopted without objection.

Amendment No. 58, as amended, was adopted without objection.

Amendment No. 60

Representative Puente offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 118

Amend **CSHB 2912** by creating a new Article 9 and renumbering Article 9 and 10 according. The new Article 9 shall read as follows:

Article 9. Edwards Aquifer

Section 9.01. As used in this Article, Edwards Aquifer has the meaning defined in Section 26.046, Water Code.

Section 9.02. Chapter 26, Subchapter D, Water Code is amended by adding Section 26.137 to read as follows:

Section 26.137. In the Contributing Zone of the Edwards Aquifer, the Commission's 30 day comment period shall be included in the review process for pollution abatement plans.

Amendment No. 61

Representative Puente offered the following amendment to Amendment No. 60:

Amend the Puente amendment, **CSHB 2912**, on page 118 of the amendment packet, as follows:

Strike lines 9 through 11 and replace as follows:

Section 26.137. The Commission shall provide for a 30 day comment period in the review process for Edwards Aquifer Protection Plans in the Contributing Zone of the Edwards Aquifer as provided in Texas Administrative Code, Sec. 213.4(a)(2).

Amendment No. 61 was adopted without objection.

Amendment No. 60, as amended, was adopted without objection.

Amendment No. 62

Representative Puente offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 119

Amend **CSHB 2912** by creating a new Article 9 and renumbering Article 9 and 10 according. The New Article 9 shall read as follows:

Article 9. Edwards Aquifer

Section 9.01. As used in this Article, Edwards Aquifer has the meaning defined in Section 26.046, Water Code.

Section 9.02. Subchapter B, Chapter 26, Water Code is amended by adding a new section 26.050 to read as follows:

Section 26.050. The Commission shall report annually on the Edwards Aquifer Program expenses and allocation of fees.

Amendment No. 62 was adopted without objection.

Amendment No. 63

Representative Uher offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 123

Amend **CSHB 2912** as follows:

(1) On page 96, line 17, replace "382.0518(c)" with "382.0518 (b) and (c)"

(2) On page 96, between lines 18 and 19, insert Subsection (b) to read as follows:

(b) The commission shall grant within a reasonable time a permit to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k) [~~382.056(d)~~], the commission finds:

(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

Amendment No. 63 was adopted without objection.

Amendment No. 64

Representative Chisum offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 124

Amend **CSHB 2912** on page 102, line 27, by striking "department or" and substituting "[~~department or~~]".

Amendment No. 64 was adopted without objection.

Amendment No. 65

Representative Wilson offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 126

Amend **CSHB 2912** by inserting a new appropriately numbered SECTION to the bill to read as follows and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.130 to read as follows:

Sec. 5.130. ELECTRIC UTILITY NEGATIVE STRANDED COSTS. (a) In this section:

(1) "Affiliated power generation company," "affiliated retail electric provider," "electric utility," "freeze period," and "transmission and distribution utility" have the meanings assigned by Section 31.002, Utilities Code.

(2) "Negative stranded costs" means the excess of the market value of electric generation assets over the net book value of those assets.

(3) "Stranded cost" has the meaning assigned by Section 39.251, Utilities Code.

(b) Notwithstanding any other provision of law, the commission has the necessary jurisdiction to administer and enforce this section. This subsection expires January 2, 2002.

(c) If at any time before January 1, 2002, the commission, in conjunction with the Public Utility Commission of Texas, determines that an electric utility that is subject to Section 39.254, Utilities Code, does not have positive stranded costs based on a computation under Section 39.201(h), Utilities Code, the commission shall require the Public Utility Commission of Texas to order the utility to discontinue the mitigation tools that are allowed by Chapter 39, Utilities Code, and to reverse any prior mitigation to the extent required to eliminate any estimated negative stranded costs. On issuance of an order under this subsection, the Public Utility Commission of Texas shall reflect the reversal of previous mitigation in the transmission and distribution rates. In addition, the Public Utility Commission of Texas shall reduce the affiliated retail electric provider's price to beat as necessary to flow through any reductions to the transmission and distribution rates associated with the reversal of the previous mitigation.

(d) During the freeze period, the commission may require the Public Utility Commission of Texas to order an electric utility that has negative stranded costs under Section 39.254, Utilities Code, together with the utility's affiliated retail electric provider and affiliated transmission and distribution utility, to credit the negative stranded costs to customers. The Public Utility Commission of Texas shall prescribe the manner in which the credit of negative stranded costs is made. The electric utility, together with its affiliated electric retail provider, affiliated power generation company, and affiliated transmission and distribution utility, shall file to finalize stranded costs and reconcile those costs as required by Section 39.262, Utilities Code.

Amendment No. 66

Representative Wilson offered the following amendment to Amendment No. 65:

Amend Amendment No. 65 by Wilson to **CSHB 2912** (page 126, proposed amendments packet) by striking all below line 3 and substituting:

SECTION _____. (a) Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.130 to read as follows:

Sec. 5.130. ELECTRIC UTILITY NEGATIVE STRANDED COSTS. (a) In this section:

(1) "Affiliated power generation company," "affiliated retail electric provider," "electric utility," "freeze period," and "transmission and distribution utility" have the meanings assigned by Section 31.002, Utilities Code.

(2) "Negative stranded costs" means the excess of the market value of electric generation assets over the net book value of those assets.

(3) "Stranded cost" has the meaning assigned by Section 39.251, Utilities Code.

(b) Notwithstanding any other provision of law, the commission has the necessary jurisdiction to administer and enforce this section.

(c) If the commission determines that an electric utility that is subject to Section 39.254, Utilities Code, does not have positive stranded costs based on a computation under Section 39.201(h), Utilities Code, the commission shall order the utility to discontinue the mitigation tools that are allowed by Chapter 39, Utilities Code, and to reverse any prior mitigation to the extent required to eliminate any estimated negative stranded costs. On issuance of an order under this subsection, the commission shall reflect the reversal of previous mitigation in the transmission and distribution rates. In addition, the commission shall reduce the affiliated retail electric provider's price to beat as necessary to flow through any reductions to the transmission and distribution rates associated with the reversal of the previous mitigation.

(d) During the freeze period, the commission may order an electric utility that has negative stranded costs under Section 39.254, Utilities Code, together with the utility's affiliated retail electric provider and affiliated transmission and distribution utility, to credit the negative stranded costs to customers. The commission shall prescribe the manner in which the credit of negative stranded costs is made. The electric utility, together with its affiliated electric retail provider, affiliated power generation company, and affiliated transmission and distribution utility, shall make a filing with the commission to finalize stranded costs and reconcile those costs in the manner required by Section 39.262, Utilities Code.

(b) Notwithstanding any other law, the powers of the Public Utilities Commission of Texas relative to the subject matter of Section 5.130, Water Code, as added by this Act, are transferred to the Texas Natural Conservation Commission.

Amendment No. 66 was withdrawn.

Amendment No. 65 was withdrawn.

Amendment No. 67

Representative R. Lewis offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 129

Amend **CSHB 2912** by adding a new SECTION to read as follows:

SECTION _____. Subchapter F, Chapter 5, Water Code is amended by adding a new Subsection 5.2291 to read as follows:

Sec. 5.2291. **SCIENTIFIC AND TECHNICAL SERVICES.** (a) In this section, "scientific and technical environmental services" means services, including but not limited to engineering services, of a scientific or technical nature the conduct of which require technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of magnitude, source and extent of contamination, contaminant fate and transport analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks.

(b) In contracting for scientific and technical environmental services, the commission shall follow the procedures for professional services selection provided the Subchapter A, Chapter 2254, Government Code.

Amendment No. 68

Representative Bosse offered the following amendment to Amendment No. 67:

Amend the Amendment by R. Lewis (page 129 of the amendment packet) on **CSHB 2912** as follows:

(1) Strike current Subsection (b) from the word "In" to the period.

(2) Add new Subsection (b) to read as follows:

(b) The procurement of a contract for scientific and technical environmental services may be conducted under the procedures for professional services selection provided in Subchapter A, Chapter 254, Government Code, if the executive director determines there is a compelling public need to do so.

Amendment No. 68 was adopted without objection.

Amendment No. 67, as amended, was adopted without objection.

Amendment No. 69

Representative Hilderbran offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 131

Amend **CSHB 2912** by adding the appropriately numbered section to read as follows:

SECTION __. Section 13.187, Water Code, is amended by amending Subsection (a) to read as follows:

(a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 90 [30] days before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include the information required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules. When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported expenses. If the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate

or to transfer a certificate pending before the commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.235(n) of this code.

Amendment No. 69 was adopted without objection.

Amendment No. 70

Representative Burnam offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 134

Amend **CSHB 2912** by adding appropriately numbered new SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly to read as follows:

SECTION _____. Section 361.0231(a), Health and Safety Code, is amended to read as follows:

(a) To protect the public health and environment[~~encourage economic development,~~] and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

SECTION _____. Section 5.012, Water Code, is amended to read as follows:

Sec. 5.012. DECLARATION OF POLICY. The commission is the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment. The commission is not responsible for fostering or encouraging economic development.

SECTION _____. Section 26.003, Water Code, is amended to read as follows:

Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries[~~and the economic development of the state~~]; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

SECTION _____. Section 27.003, Water Code, is amended to read as follows:

Sec. 27.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare and[~~;~~] the operation of existing industries, [~~and the economic development of the state~~]; to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

Amendment No. 71

Representative Bosse offered the following amendment to Amendment No. 70:

Amend the Amendment by Burnam on **CSHB 2912** as follows:

(1) Strike Lines 12-19.

Amendment No. 71 was adopted without objection.

Amendment No. 70, as amended, was adopted without objection.

Amendment No. 72

Representatives Cook and Uher offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 136

Amend **CSHB 2912** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 361.114, Health and Safety Code, is amended to read as follows:

Sec. 361.114. ~~PROHIBITION OF [GRANT OF PERMIT FOR] DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS [SALT DOMES].~~ [(a)] ~~The commission by rule shall prohibit the storage, processing, or disposal of [may not issue a permit for a] hazardous waste [injection well] in a solution-mined salt dome cavern or a sulphur mine [unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity].~~

~~[(b) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:~~

~~[(1) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;~~

~~[(2) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;~~

~~[(3) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;~~

~~[(4) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt-dome waste containment cavern; and~~

~~[(5) any other criteria required by the commission to satisfy that the test of urgency has been met.]~~

Amendment No. 72 was adopted without objection.

Amendment No. 73

Representatives Talton and Bonnen offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 138

Amend **CSHB 2912** by adding new sections to the bill, numbered appropriately, to read as follows:

SECTION __. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0125 to read as follows:

Sec. 382.0125. LIMITATIONS ON CONTENT OF FEDERAL AIR QUALITY IMPLEMENTATION PLAN. The commission may not include in an implementation plan approved or adopted or to be approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515), as amended:

(1) the imposition of a speed limit on a state or federal highway of less than 65 miles per hour; or

(2) the reduction of the speed limit on any other road.

SECTION __. The changes in law made by Section 382.0125, Health and Safety Code, as added by this Act, apply to any implementation plan for purposes of compliance with Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515), as amended. If, at the time that section takes effect, the Texas Natural Resource Conservation Commission has a proposed or approved implementation plan, the commission as soon as is practicable shall take any steps necessary to conform the plan to the requirements of Section 382.0125, Health and Safety Code, as added by this Act.

Representative Bosse moved to table Amendment No. 73.

The motion to table prevailed.

Amendment No. 74

Representative Capelo offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 139

1. Amend **CSHB 2912** by inserting a new section, appropriately numbered, to read as follows:

SECTION __. Section 382.019(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 382.037(g), or another provision of this chapter, the [The] commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

2. Amend **CSHB 2912** by inserting a new section, appropriately numbered, to read as follows:

SECTION __. Section 382.037, Health and Safety Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean

~~motor vehicle fuels for any area of the state that are more stringent or restrictive [other] than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (h) unless the fuel is specifically authorized by the legislature [or unless it is demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Texas Department of Health, it is determined to be necessary for the protection of public health].~~

~~(h) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.~~

~~(i) The commission may consider, as an alternative method of compliance with Subsection (h), fuels to achieve equivalent emissions reductions.~~

3. Amend **CSHB 2912** by inserting a new section, appropriately numbered, to read as follows:

SECTION__. Section 382.039(a), Health and Safety Code, is amended to read as follows:

(a) ~~Except as provided by Section 382.037(g) or another provision of this chapter, the [The]~~ commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

4. Amend **CSHB 2912** by inserting a new section, appropriately numbered, to read as follows:

SECTION__. The changes in law made by this Act do not apply to fuel standards adopted by the Texas Natural Conservation Commission before September 1, 2000.

Amendment No. 75

Representative Bonnen offered the following amendment to Amendment No. 74:

Amend the Capelo Amendment (page 139 of the amendment packet) to **CSHB 2912** on page 2, at the end of the amendment, by adding the following:

(5) Amend **CSHB 2912** by inserting the following appropriately numbered section and renumbering subsequent sections of the bill accordingly:

SECTION__. Sections 382.0373 and 382.0374(b) are repealed.

Representative Capelo moved to table Amendment No. 75.

The motion to table prevailed.

Amendment No. 74 was adopted without objection.

Amendment No. 76

Representative Crownover offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 148

Amend **CSHB 2912** by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.05151 to read as follows:

Sec. 382.05151. PROHIBITION ON ISSUANCE OF PERMIT IF RESEARCH BY CERTAIN INSTITUTIONS AFFECTED. The commission may not issue a permit to a facility under this chapter if the commission finds that emissions from the facility would adversely affect research performed by an institution of higher education.

Amendment No. 77

Representative Crownover offered the following amendment to Amendment No. 76:

Amend Amendment No. 76 by Crownover to **CSHB 2912** (page 148, proposed amendments packet) by striking lines 6-10 and substituting:

Sec. 382.05151. EFFECT OF PERMIT ON RESEARCH BY INSTITUTIONS OF HIGHER EDUCATION. In issuing a permit under this chapter, the commission shall consider the effects emissions from the facility under the proposed permit may have on research being conducted by an accredited institution of higher education.

Amendment No. 77 was adopted without objection.

Amendment No. 76, as amended, was adopted without objection.

Amendment No. 78

Representative G. Lewis offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 150

Amend **CSHB 2912** by inserting the following new article, with the article and sections in the article appropriately numbered, and renumbering subsequent articles and sections of the bill appropriately:

ARTICLE __. LITTER AND WASTE; RECYCLING

Sec. __.01. DEFINITIONS. In this article:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Recycling" has the meaning assigned by Section 361.003, Health and Safety Code.

Sec. __.02. STUDY AND REPORT. (a) In connection with the commission's duties under Section 361.0151, Health and Safety Code, the commission shall conduct a study to compare various strategies to minimize litter and waste and to encourage recycling. The commission shall analyze strategies used in other states, including:

(1) bottle deposit laws and the impact of these laws on litter reduction and recycling;

(2) voluntary and mandatory curbside recycling programs and the impact of these programs on recycling;

(3) voluntary cleanup programs and the impact of these programs on litter reduction; and

(4) other strategies that encourage litter reduction, the collection of recyclable materials, and the development of recycled products.

(b) The commission shall prepare a written report of the findings of the study required by this section and submit the report to the governor, lieutenant governor, and speaker of the house of representatives not later than May 1, 2002.

SECTION __.03. EXPIRATION. This article expires January 1, 2003.

Amendment No. 78 was adopted without objection.

Amendment No. 79

Representative Hope offered the following amendment to **CSHB 2912**:
Floor Packet Page No. 152

Amend **CSHB 2912** as follows:

(1) Add a new article to the bill, with the article and the sections in the article to be numbered appropriately, to read as follows:

ARTICLE __. EMISSIONS REQUIREMENTS FOR VEHICLES IN FLEET

SECTION __. Section 1232.104(a), Government Code, is amended to read as follows:

(a) If the authority determines that a project is financially viable and sufficient revenue is or will be available, the authority may issue and sell obligations the proceeds of which shall be used for the financing of:

(1) the conversion of state agency vehicles and other sources of substantial energy output to an alternative fuel [~~under Subchapter A, Chapter 2158~~];

(2) the construction, acquisition, or maintenance by the commission of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support state agency vehicles and other energy applications that use an alternative fuel;

(3) the conversion of school district motor vehicles and other sources of substantial energy output to an alternative fuel;

(4) the construction, acquisition, or maintenance by a school district of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support school district motor vehicles and other energy applications that use an alternative fuel;

(5) the conversion of local mass transit authority or department motor vehicles and other sources of substantial energy output to an alternative fuel [~~under Chapters 451, 452, and 453, Transportation Code~~];

(6) the construction, acquisition, or maintenance of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology by a local mass transit authority or department to support transit authority or department vehicles and other energy applications that use an alternative fuel;

(7) the conversion of motor vehicles and other sources of substantial energy output of a county, a municipality, or a public health district established under Chapter 121, [~~local government, as defined by Section 382.003,~~] Health and Safety Code, to an alternative fuel [~~under Section 382.134, Health and Safety Code~~];

(8) the conversion of motor vehicles and other sources of substantial energy output of a hospital district or authority, a housing authority, or a district or authority created under Section 52, Article III, Texas Constitution, or Section 59, Article XVI, Texas Constitution, to an alternative fuel;

(9) the construction, acquisition, or maintenance of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support motor vehicles and other energy applications that use an alternative fuel by a county, a municipality, or an entity described by Subdivision (8); or

(10) a joint venture between the private sector and a state agency or political subdivision that is required under law to use an alternative fuel in the agency's or subdivision's vehicles or other energy applications to:

(A) convert vehicles or other sources of substantial energy output to an alternative fuel;

(B) develop fueling stations and resources for the supply of alternative fuels and engine-driven applications;

(C) aid in the distribution of alternative fuels; and

(D) engage in other projects to facilitate the use of alternative fuels.

SECTION _____. Section 2171.103(b), Government Code, is amended to read as follows:

(b) The office may:

(1) establish centralized refueling stations throughout the state;

(2) operate regional conversion and repair facilities; and

(3) provide all services and support necessary to expedite the use of compressed natural gas or other alternative fuels by state agencies [as required by Subchapter A, Chapter 2158].

SECTION _____. Chapter 382, Health and Safety Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. TEXAS CLEAN FLEET PROGRAM

Sec. 382.151. DEFINITIONS. In this subchapter:

(1) "Affected area" means the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Cooke, Coryell, Dallas, De Witt, Delta, Denton, Ellis, El Paso, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

(2) "Annually" means the 12-month period from September 1 through August 31.

(3) "Lease" means the exclusive use and control of a motor vehicle

pursuant to a contractual agreement for a term of 120 days or more for consideration.

(4) "Local government" means a school district, county, municipality, junior college district, river authority, or any other special district, or political subdivision created under the constitution or a statute of this state. The term does not include a mass transit authority or a state agency.

(5) "Mass transit authority" means a transportation or transit authority or a department established under Chapter 451, 452, 453, or 457, Transportation Code, that operates a mass transit system.

(6) "Motor vehicle" means a self-propelled device designed to transport persons or property on a highway that is required to be registered under Chapter 502, Transportation Code, and that has a gross vehicle weight rating of 10,000 pounds or less. The term does not include:

(A) a motor vehicle used exclusively for law enforcement or emergency purposes;

(B) a motor vehicle used in the maintenance or repair of underground mass transit facilities that is required by federal law to operate on diesel fuel;

(C) a motor vehicle used for manufacturer product evaluations or tests, including a motor vehicle owned or held by a university research department, independent testing laboratory, another evaluation facility, or a state agency whose primary purpose is to evaluate performance of motor vehicles for engineering, research, and development or quality control reasons; or

(D) a motor vehicle held for sale by a motor vehicle dealer, including a demonstration vehicle.

(7) "State agency" means a board, commission, department, office, agency, institution of higher education, or other governmental entity in the executive, judicial, or legislative branch of state government.

Sec. 382.152. APPLICABILITY. This subchapter applies only to:

(1) a state agency that owns, operates, or leases a fleet of 15 or more motor vehicles in this state;

(2) a local government that owns, operates, or leases a fleet of 25 or more motor vehicles in an affected area;

(3) a mass transit authority that owns, operates, or leases a fleet of 25 or more vehicles in an affected area; or

(4) any other person who owns, operates, or leases a fleet of 25 or more motor vehicles.

Sec. 382.153. PURCHASING AND LEASING REQUIREMENTS. (a) The following percentages of motor vehicles purchased or leased annually by a state agency, mass transit authority, local government, or other person may not exceed an average of oxides of nitrogen standards of bin 3, 40 C.F.R. 86.1811-04 as published in the February 10, 2000, Federal Register for Tier 2 exhaust emission standards:

(1) 25 percent of vehicles purchased or leased on or after September 1, 2003;

(2) 50 percent of vehicles purchased or leased on or after September 1, 2004;

(3) 65 percent of vehicles purchased or leased on or after September 1, 2005;

(4) 80 percent of vehicles purchased or leased on or after September 1, 2006;

(5) 90 percent of vehicles purchased or leased on or after September 1, 2007; and

(6) 100 percent of vehicles purchased or leased on or after September 1, 2008.

(b) A state agency, mass transit authority, local government, or other person may purchase or lease a motor vehicle that is converted to a fuel or power source other than gasoline or diesel to satisfy the percentage requirements under this section.

(c) All motor vehicles purchased or leased under this section must be certified to meet the federal Tier 2 exhaust emission bin standards.

(d) The commission may waive the requirements of this section or reduce the percentage requirements of this section if:

(1) the state agency, mass transit authority, local government, or any other person demonstrates by evidence acceptable to the commission that motor vehicles that meet the specific average exhaust emission standard for oxides of nitrogen under Subsection (a) are not available for purchase or lease in this state; or

(2) a mass transit authority demonstrates by evidence acceptable to the commission that complying with the requirements would unduly compromise a public transportation alternative that reduces motor vehicle miles traveled.

Sec. 382.154. ADOPTION OF RULES. The commission shall adopt rules to implement this subchapter.

Sec. 382.155. REPORTING REQUIREMENTS. The commission by rule shall require each state agency, mass transit authority, local government, or other person to whom this subchapter applies to maintain records and submit reports to demonstrate compliance with this subchapter.

Sec. 382.156. RELATIONSHIP TO OTHER LAW. This subchapter does not require the purchase or lease of a motor vehicle in violation of the alternative fuel transportation program under the Energy Policy Act of 1992 (Pub. L. No. 102-486), as amended, or any other applicable federal or state law.

SECTION _____. Section 113.287(e), Natural Resources Code, is amended to read as follows:

(e) A state agency, county, municipality, school district, or mass transit authority or department is eligible to receive a loan, grant, or other disbursement under this subchapter to carry out an eligible conversion or infrastructure project regarding LPG or another environmentally beneficial fuel ~~[to comply with fuel requirements provided by or by rules adopted under:~~

~~[(1) Subchapter F, Chapter 382, Health and Safety Code;~~

~~[(2) Subchapter A, Chapter 2158, Government Code;~~

~~[(3) Subchapter C, Chapter 2171, Government Code;~~

~~[(4) Subchapter G, Chapter 451, Transportation Code;~~

~~[(5) Subchapter F, Chapter 452, Transportation Code; or~~

~~[(6) Subchapter F, Chapter 453, Transportation Code].~~

SECTION _____. Section 5.178(b), Water Code, is amended to read as follows:

(b) The report due by December 1 of an even-numbered year must ~~[shall]~~ include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Sections 361.0219(c), 361.0232, ~~[361.485,]~~ 361.510, and 371.063, ~~[and 382.141,]~~ Health and Safety Code; and

(B) the reports required by Section 26.0135(d) of this code and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985.

SECTION _____. The following laws are repealed:

(1) Subchapter A, Chapter 2158, Government Code;

(2) Subchapter F, Chapter 382, Health and Safety Code;

(3) Subchapter G, Chapter 451, Transportation Code;

(4) Subchapter F, Chapter 452, Transportation Code;

(5) Subchapter F, Chapter 453, Transportation Code; and

(6) Subchapter E, Chapter 457, Transportation Code.

SECTION _____. The Texas Natural Resource Conservation Commission shall examine the feasibility and effectiveness of fleet program requirements similar to the requirements under Subchapter G, Chapter 382, Health and Safety Code, as added by this article, for motor vehicles that have a gross vehicle weight rating of more than 10,000 pounds. The commission shall report its findings and recommendations to the legislature by December 1, 2002.

SECTION _____. (a) Except as otherwise provided by this section, this article takes effect September 1, 2001.

(b) The sections of this article that amend Sections 1232.104(a) and 2171.103(b), Government Code, Section 113.287(e), Natural Resources Code, and Section 5.178(b), Water Code, take effect September 1, 2003.

(c) The section of this article that repeals certain statutes takes effect September 1, 2003.

(2) Renumber the subsequent articles and sections of the bill appropriately.

Amendment No. 79 was adopted without objection.

Amendment No. 80

Representative Green offered the following amendment to **CSHB 2912**:

Floor Packet Page No. 166

Amend **CSHB 2912** by adding the following article, appropriately numbered, and renumbering subsequent articles and sections of the bill accordingly:

ARTICLE ____ REGULATION OF THE DISPOSAL OF ANIMAL REMAINS

SECTION _____.01. Subchapter H, Chapter 801, Occupations Code, is amended by adding Section 801.361 to read as follows:

Sec. 801.361. DISPOSAL OF ANIMAL REMAINS. (a) A veterinarian may dispose of the remains of an animal by burial or burning if:

(1) the burial or burning occurs on property owned by the veterinarian; and

(2) the veterinarian does not charge for the burning or burial.

(b) Notwithstanding any other law, the Texas Natural Resource Conservation Commission may not adopt a rule that prohibits conduct authorized by this section.

Representative Chisum moved to table Amendment No. 80.

The motion to table prevailed.

CSHB 2912, as amended, was passed to engrossment.

RULES SUSPENDED

Representative Solis moved to suspend the 5-day posting rule to allow the Committee on Economic Development to meet at 8 a.m. tomorrow to consider sunset bill **HB 3452**.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Public Education, Subcommittee on School Finance, will not meet at 8 a.m. tomorrow.

Agriculture and Livestock, upon final recess today, E2.014.

Economic Development, 8 a.m. tomorrow, E2.028, for a public hearing, to consider sunset bill **HB 3452**.

Human Services will not meet tonight.

Insurance, upon final recess today, Desk 24, for a formal meeting, to consider pending bills.

Pensions and Investments, Subcommittee on Sick Leave, will not meet until further notice.

RECESS

Representative Bosse moved that the house recess until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 9:59 p.m., recessed until 10 a.m. tomorrow.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

Senate List No. 12**SB 417, SB 923****House List No. 32****HB 121****MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

Message No. 1**MESSAGE FROM THE SENATE****SENATE CHAMBER**

Austin, Texas

Thursday, April 19, 2001

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 100 Dunnam SPONSOR: Sibley
In memory of J. B. Vandiver, Sr., of Moody.

SB 34 Zaffirini
Relating to providing dental services to certain recipients of medical assistance.

SB 42 Zaffirini
Relating to identifying and addressing the needs of certain recipients of financial assistance and dependent children of recipients of financial assistance.

SB 43 Zaffirini
Relating to simplifying the certification process for medical assistance provided to children.

SB 49 Zaffirini
Relating to applying penalties to recipients of financial and nutritional assistance for certain drug-related and alcohol-related convictions.

SB 720 West, Royce
Relating to regulating certain political contributions made by judicial candidates and officeholders.

SB 749 Shapleigh
Relating to the authority of the Texas Natural Resource Conservation Commission to participate in environmental projects in Mexico.

SB 772 Harris

Relating to requiring the Texas Department of Human Services to establish criteria for designating nursing facility operators with excellent operating records as eligible to acquire a license to operate another existing nursing facility on an expedited basis.

SB 789 Moncrief

Relating to the regulation and reimbursement of telemedicine medical services and telehealth services.

SB 822 West, Royce

Relating to the regulation of political contributions to judicial candidates and officeholders.

SB 863 Staples

Relating to tax refunds to property owners following ad valorem tax appeals.

SB 983 Duncan

Relating to the authority, and to liability in connection with the authority, of the boards of trustees of certain state retirement systems to contract with professional investment managers.

SB 1095 Carona

Relating to ad valorem taxation.

SB 1295 Van de Putte

Relating to the prosecution of the offense of indecency with a child.

SB 1296 Lucio

Relating to the issuance of general obligation bonds to provide financial assistance to counties for roadway projects to serve border colonias.

SB 1335 Brown, J. E. "Buster"

Relating to certain river authorities and water districts, the codification of Acts creating and regulating the authorities and districts, and the creation of the Texas Water Advisory Council to review the authorities and districts.

SB 1622 Barrientos

Relating to the regulation of amusement rides; providing a criminal penalty.

SB 1783 Sibley

Relating to the regulation of telecommunications services, fees, and programs.

SJR 37 Lucio

Proposing a constitutional amendment authorizing the issuance of general obligation bonds to provide financial assistance to counties for roadway projects to serve border colonias.

Respectfully,

Betty King
Secretary of the Senate

Message No. 2**MESSAGE FROM THE SENATE
SENATE CHAMBER**

Austin, Texas

Thursday, April 19, 2001 - 2

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 1362 Goodman SPONSOR: Harris
Relating to the regulation of dangerous wild animals; providing for the imposition of civil penalties and the prosecution and punishment of certain related offenses.
(AMENDED)

HCR 106 Pitts SPONSOR: Cain
In memory of Warwick H. Jenkins III of Waxahachie.

SB 102 Nelson
Relating to the regulation of cloning of human beings; providing penalties.

SB 368 Zaffirini
Relating to permanency planning procedures for children in state institutions.

SB 873 Lindsay
Relating to infrastructure planning in certain urban counties.

SB 1096 Cain
Relating to economic incentives to attract horse racing events of national significance.

SB 1404 Madla
Relating to the establishment by the Texas Department of Transportation of a highway construction pilot program that includes a limited pavement warranty.

Respectfully,

Betty King
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

April 18

Business & Industry - HB 549, HB 2186, HB 2445, HB 2600, HB 2613, HB 2803, HB 3199, HB 3332

Civil Practices - HB 792, HB 1918, HB 2400, HB 3136, HCR 199

Corrections - HB 776, HB 1429, HB 3185, HB 3249, HB 3504, SB 644, SB 661, SB 1206, SCR 12

County Affairs - HB 370, HB 3654, SB 634

Environmental Regulation - HB 1227, HB 2271, HB 2653, HB 2970, HB 3284, SB 689, SB 1338

Higher Education - HB 286, HB 658, HB 1014, HB 1359, HB 2323, HB 2365, HB 2513, HB 2775, HB 3267, HB 3508, HB 3524, HB 3590, SB 353, SB 575

Insurance - HB 849, HB 1408, HB 1491, HB 1676, HB 2482, HB 2829, HB 2932, HB 3254, HB 3327

Judicial Affairs - HB 950

Juvenile Justice & Family Issues - HB 3677, SB 1000

Land & Resource Management - HB 779, HB 2168

Public Education - HB 801, HB 2759, HB 2864, HB 3526, HJR 85, SB 82, SB 524

Redistricting - HJR 95

State Affairs - HB 399, HB 1026, HB 1544, HB 1692, HB 1727, HB 2107, HB 2156, HB 2262, HB 2809, HB 2810, HB 2811, HB 2812, HB 2813, HB 2853, HCR 116, SB 247, SB 695

Transportation - HB 2083, HB 2123, HB 2243, HB 2313, SB 487, SB 777

ENGROSSED

April 18 - HB 2, HB 10, HB 223, HB 234, HB 409, HB 482, HB 651, HB 678, HB 785, HB 845, HB 947, HB 1193, HB 1314, HB 1514, HB 1636, HB 1768, HB 1938, HB 2249, HB 2310, HB 2494, HB 2495, HB 2575, HB 2700, HB 2840

SENT TO THE GOVERNOR

April 18 - HB 831, HCR 3, HCR 4, HCR 35, HCR 36, HCR 37, HCR 195

